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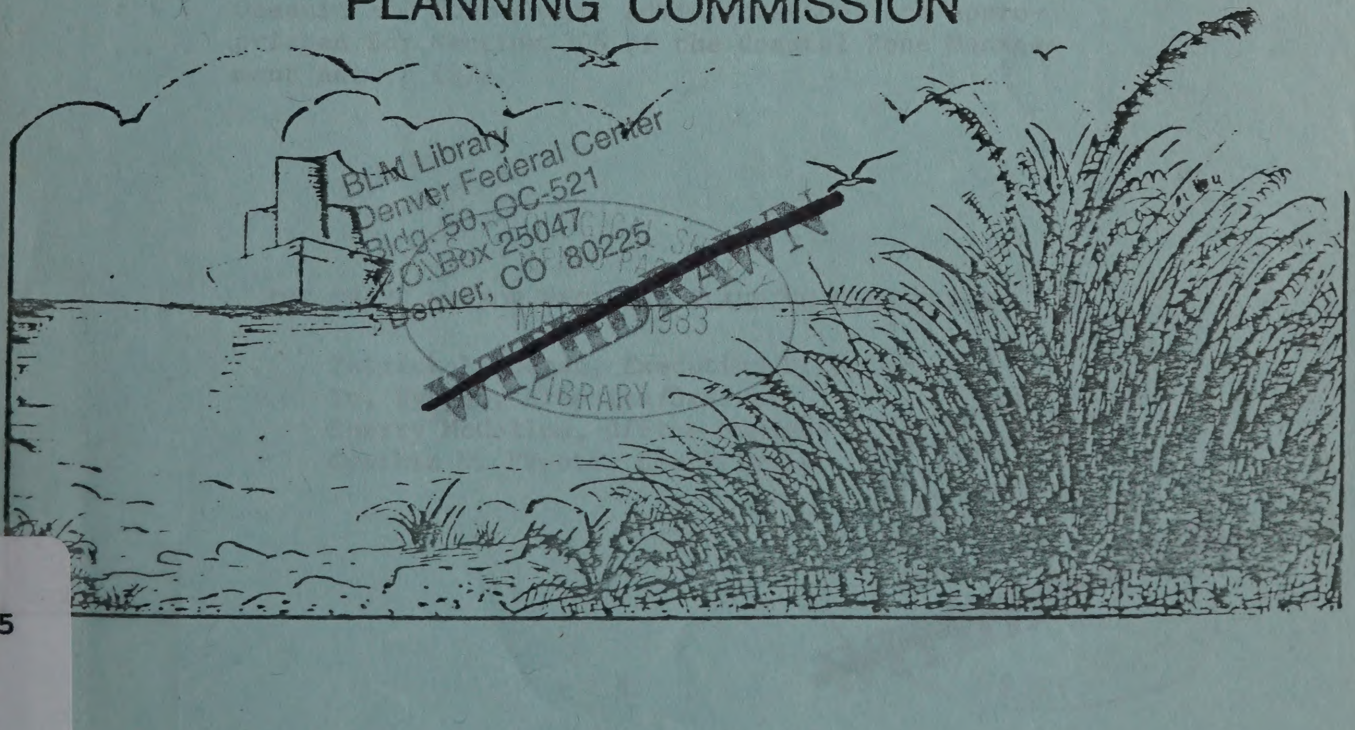
JUNE 1982

THE GRAYS HARBOR REGIONAL
PLANNING COMMISSION



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COASTAL ZONE
MANAGEMENT POLICY
AND
THE GRAYS HARBOR
PROCESS

JUNE 1982

The preparation of this report was financially aided through a grant from the Washington State Department of Ecology with funds obtained from the National Oceanic and Atmospheric Administration, and appropriated for Section 306 of the Coastal Zone Management Act of 1972.

THE GRAYS HARBOR REGIONAL PLANNING COMMISSION

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INTRODUCTION

This report is a compilation of articles, papers, and excerpts that have been written regarding the Grays Harbor estuary management planning process and its objectives. These papers are focused on the conceptual basis of the process and the federal policy issues that the program has raised. It includes the perspectives of many people ranging from direct participants to outside observers.

The Grays Harbor Estuary Management Program began in 1975 as an innovative planning effort which sought to resolve the conflicting management objectives of various public agencies charged with either the protection or development of the resources of the Grays Harbor estuary. This effort grew out of a history of controversy regarding what estuarine areas should be committed or reserved for various conservation or deveolpment purposes. The Program as originally conceived was an intergovernmental planning program which would develop a single, cohesive management plan by actively involving each agency charged with a management role by state, local, or federal law ensuring both consistency between various management programs greater predictability for prospective developers and those concerned about effective resource management.

When the Grays Harbor process was originally designed it was to address substantive problems and issues that existed concerning the management of the Grays Harbor Estuary. It was expected that if the various agencies involved in the management of the system could resolve their differences regarding where and how development should occur, the day-to-day decisionmaking by local, state, and federal regulartory systems could then be based upon this result. It was learned, however, that this would not necessarily be the case. Although the resolution of the substantive policy issues was itself a difficult task, the incorporation of the result into the federal policy framework proved to be a far greater problem. While the development of the original plan basically took a year and a half to complete, the incorporation of it into the federal regulatory framework has not yet been achieved four years later. This is in spite of considerable modification to the original plan to facilitate such incorporation (and to accommodate substantive issues which were raised later in the process).

The Grays Harbor experience is important for two reasons: (1) the experience it provides in the technology of developing intergovernmental

planning programs and (2) the very significant policy issues it has raised for coastal management in specific and the coordination of governmental policy in general. The technology of intergovernmental planning inevitably will be dependent both on the local situation and on controversies related to the resolution of issues. As such, discussions regarding this aspect of the Grays Harbor program have tended to be highly complex and cannot be readily separated from the perspective of the observers' values related to the result of the planning process. For these reasons the "nuts and bolts" of this process can only be applied to other processes with a great deal of care and study. Far more important than the "nuts and bolts" of the experience is its experimentation with a conceptual approach to intergovernmental coordination and how this approach meshes with the federal policy framework. Consequently, this report contains articles and papers which focus primarily on this aspect of the experience. There are numerous other articles and papers which address either the "nuts and bolts" of the process or controversies related to the content of the plan.

The articles in this paper are divided into four groups. The first group is four articles which seek to provide an overview of the Grays Harbor program and to provide some of its flavor. These articles are prepared by four observers of widely different perspectives; a federal agency evaluater, a participant, an outside observer from an environmental interest, and a free lance author. The second group of articles is a series of articles which provide some of the conceptual framework for the program. The third group of articles utilizes the Grays Harbor experience to describe the potential for special area management plans as a means for more effective coastal zone management.

The last group is actually a series of excerpts from The Federal Coastal Program Review: A Report to the President. This report, after assessing the effectiveness of the various federal regulatroy programs to manage coastal resources, recommends greater utilization of special area management planning. As such these excerpts provide a particularly comprehensive overview of the concepts of special area management planning and its potential to improve coordination and predictability of the myriad of state, local, and federal programs affecting the coastal zone.

CHAPTER 1

CHAPTER 1

THE GRAYS HARBOR PROCESS

Much has been written regarding the Grays Harbor Planning process. The four articles presented in this chapter provide three different views of that process and the nature of the plan itself.

In 1978 shortly after the first draft of the plan was published, the Office of Coastal Zone Management conducted a detailed review of the program. Grant DeHart, then on the staff of the Office, conducted the review. This review became the landmark analysis of the plan and its publication in 1978 led to much of the interest that the planning process has recieved. Subsequent to this analysis, Grant DeHart has followed the process and has written many other articles on Grays Harbor and similar efforts elsewhere. Grant DeHart is also one of the primary authors of The Federal Coastal Programs Review, excerpts of which are presented in Chapter IV.

As an early article on the process this article presents an analysis of the process while it was still fresh and before it experienced some of the controversies and complexities the process experienced later. As such it serves as a good introduction to the planning process. However, since it was undertaken early, it also does not address some of the fundamental issues that were later encountered. These issues, however, were to some extent flushed out for the first time in the paper. Chapter IV presents a later view of these same questions.

The second article is an excerpt out of a study conducted by the Conservation Foundation in 1980 on the status of Coastal Management. This excerpt provides perhaps one of the most straightforward summaries of the planning process that has been done. It was part of a broader study by the Conservation Foundation of Coastal Management in which future directions for Coastal Management was examined in some detail. This report should be of particular interest to anyone concerned about the future of coastal zone management. One of the authors of this report, John Clark, is a noted exponent in the environmental community of special area management plans. John Clark has followed the process since this report was published and has participated in some of the later task force meetings.

The third article is unique in its capture of the flavor of the

process and is especially good in its description of how the process actually worked. It is an article written by Dan Chasen, a free lance author, in the February 1978 edition of Pacific Search. Pacific Search has given the Grays Harbor Regional Planning Commission permission to reproduce this article. As in the case of other authors in this section, Dan Chasen has followed the Esturay Plan since this article was published and has attended most of the task force meetings. We understand that he is planning to write another article on the process.

The last article in this report was prepared in 1981 by the Grays Harbor Regional Planning Commission in order to respond to requests for a more current discussion on the planning process. As such, it brings the other articles in the chapter more up-to-date and adds the perspective of a direct participant in the process. Pat Dugan still directs the process as the Director of the Grays Harbor Regional Planning Commission, and is the author of this report.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

March 9, 1978 (Revised March 21)

MEMORANDUM

TO: Robert W. Knecht
The Coastal Zone Management Advisory Committee

FROM: Grant Dehart Grant Dehart

SUBJECT: Grays Harbor Management Plan -- Case Study Review

The Office of Coastal Zone Management has conducted a detailed review of the Grays Harbor Estuary Planning Task Force in Washington State and its preparation of an Estuary Management Plan. This review was conducted February 15-23, 1978 as part of OCZM's overall assessment of state progress in implementing the national CZM program.

The Grays Harbor experience was selected because: 1) state, Federal, local and port officials involved in the Estuary Planning Task Force thought that it might serve as a prototype for conflict resolution in the coastal zone and 2) because one environmental interest group challenged the process in a report to the Coastal Zone Management Advisory Commitee.

The review involved meetings with staffs of the Port of Grays Harbor, the Grays Harbor Regional Planning Commission, Federal and state agencies involved in the Task Force, local officials, environmental interest groups and the consultants to the Task Force. It also involved attendance at the first public hearing on the draft plan; a boat tour of the harbor and visits to several communities around the shoreline of the harbor.

This report will review events leading up to the formation of the Task Force, how the planning process worked and what it has accomplished. The contents of the plan are briefly described. Since the planning process is not complete, certain problems and unanswered questions are identified for resolution in the next stages of the process.

Background:

Grays Harbor, a very productive and industrially developed estuary, has been an area of controversy for several years. The State of Washington Coastal Zone Management Program, approved in June, 1976, recognized the harbor estuary as "an area of special concern." Under the state's Shoreline Management Act, the harbor was designated a "shoreline of statewide significance." The CZM program particularly cited the need to "maintain a balance between the filling of intertidal areas and the preservation of wetlands."

After approval of the state's program, implementation planning for this "area of special concern" began with the establishment of the Grays Harbor Estuary Planning Task Force. This Task Force includes representatives from Grays Harbor County and all municipalities in the estuary, the Port of Grays Harbor, four state and four Federal agencies with some jurisdiction in the harbor. The Task Force was established by the Grays Harbor Regional Planning Commission after state and Federal permitting agencies refused to support further applications for dredging or filling projects until an overall plan for the estuary was agreed upon. Senator Henry Jackson's office was directly involved in urging such a plan.

Even though the Grays Harbor Regional Planning Commission had previously prepared, and the Washington Department of Ecology had approved the Grays Harbor Shoreline Master Program, it did not resolve the conflicts between the local governments, the port and the state and Federal resource agencies over major development proposals in the harbor. On the one hand, the resource agencies claimed that the earlier plan was done without adequate resource information, that the plan was too general to be used for permit decisions, and that they had not been adequately involved in its preparation. On the other hand, the Port and some local governments found the earlier plan to be too restrictive when literally interpreted, precluding further growth in an area where community and industrial growth is confined between the mountain slopes and the water, and where periodic dredging of the harbor channel requires disposal of dredged materials. Conflicts over Port proposed development and development in the City of Aberdeen reached a climax over a Kaiser Steel Company application for a site to assemble offshore drilling platforms (claimed to be in the national interest), involving filling of 45 acres of the harbor.

The confrontation over this project frustrated the interests of all parties in the decision process. The Port's development plans were stymied by state and Federal agency opposition to Corps of Engineers permits. Local government decisions were overturned by state agencies, blocking development plans in areas designated "urban" in the state-approved Shoreline Master Program. State and Federal resource agencies were subject to intense political pressures from elected officials at all levels over specific permits and from environmental interest groups trying to stop further filling of the estuary. Congressional office support was being taxed by repeated pleas from constituents on each project. In general, the local and private interests were frustrated by their inability to preduct the outcome of public decisions, or understand the criteria or standards by which these decisions were being made.

Seventeen months after the first application, the Kaiser permit was approved (August, 1976) with the warning that no further dredge or fill permits would be approved without a more detailed and comprehensive plan. Unfortunately, Kaiser has not moved to develop the fill site, either because of the delay in the Gulf of Alaska OCS lease sale or because they found a more suitable location for the industry near Everett, Washington, according to those interviewed.

The area for the Kaiser site was considered by the Federal and state resource agencies to be one of a few remaining viable salt marshes in the highly impacted area of Grays Harbor.

The Planning Process:

The Grays Harbor Planning Process has been compared by many of those involved to sensitive labor negotiations. The same kind of dynamic mediation process is used between those with opposing points of view to isolate the areas of disagreement, consider alternative compromises, and negotiate a settlement.

a. The Context for Planning:

For a successful process, the context for planning has to be "ripe." Each of the parties to the negotiations had to recognize the need for resolution of the problems, and have a commitment to the process of working out compromises. The consultant, Rollie Montague, interprets this as: "the group has to be at least will to tolerate each other long enough to talk about very tough issues." The number of players in this process needs to be relatively small, preferably with each player representing a constituency of interests in the area as well as an official jurisdictional responsibility.

The process also works best in an identifiable geographic entity, such as the natural system of Grays Harbor Estuary and where there are jurisdictional boundaries within which control is shared by Federal, state and local government.

Public interest groups or citizens were not official parties in the negotiations (although the meetings were open), because they did not have a decisionmaking responsibility, and could block compromises. The public input into the process takes place primarily before the planning begins, through a series of meetings with various interest groups, and after the compromises are reached in the draft plan, through public hearings, meetings and broad public review prior to completion of a final plan or its official adoption by each level of government. While this probably represents reasonable and appropriate public participation in this instance, complaints have been raised by the Sierra Club and Friends of the Earth.

b. The Management Planning Team:

All of those interviewed were quick to point out that the success of the Grays Harbor experience, to date, has depended upon the skills of the management planning team, which was made up of outside consultants working for the Regional Planning Commission. The entire process was funded through Washington's Coastal Zone Management Program. Rollie Montagne, of Montagne-Bierly Associates, Inc., and Gordon Davis of Wilsey and Ham, were viewed as independent experts and mediators. Since they were not identified with any of the positions held by the Task Force participants, they were trusted to negotiate evenly with all parties. They also took the brunt of, and were able to cushion the criticism from one group of another when negotiations became heated, which often happened. The essential expertise in the consultant team, according to these consultants should be:

- technical knowledge of the environmental resources to be managed, and the ability to communicate this knowledge to citizens;
- knowledge of the legal, political and institutional framework of the planning jurisdictions;
- planning expertise to organize the interests of the group into planning concepts and develop the format for the plan; and
- skills in negotiation or mediation between people with differing responsibilities and points of view, (i.e., the skills of a labor negotiator).

Each of the members of the Task Force also has to have certain capabilities, if the planning effort is to be successful, including:

- a willingness and ability to enter into mediation with opposing interests;
- responsibility to negotiate policy positions on behalf of his/her organization or agency; and
- ability to understand technical and legal issues that are determinants of public policy.

The Grays Harbor Regional Planning Commission was a key part of the management team for the plan. It served as the forum and the catalyst to bring all of the various jurisdictions together. It also provided the logistical support and the essential communication link between local elected officials throughout various stages of the process.

c. The Planning Process:

It is clear from the case study discussions that setting the proper context for the planning process is as important to the achievement of conflict resolution as the process itself. With this in place, the following five steps in the process were entered into with a reasonable chance for success:

Step 1. Estuary Information:

A technical team composed of resource specialists, planners, economists and other technical personnel was drawn from industry and local, state, and Federal agencies to assist the consultant team develop the data base. This data was transferred to large, easily understood

maps and a technical document. Interviews were conducted with 68 persons representing the broad spectrum of interests in the harbor.

The existence of a good data base was important at this stage of the planning effort. Several previous research efforts had been completed, including a major environmental study of the effects of dredging in the harbor, conducted by the Corps of Engineers.

Step 2. Planning:

Six, one and two day workshops were held of the Estuary Planning Task Force at various stages of the development of the Grays Harbor plan, over a 16 month period. It appears that some of the parties entered into these workshop sessions with a definite strategy for gaining what they needed to obtain in the plan, while others were acting more on the basis of general principles that needed to be accommodated. For example, Henry Soike, Port Manager of Grays Harbor, advised attendees of an American Association of Port Authorities convention in Mexico City:

> "I would like to say to any port that wishes to get involved in this type of planning process, make sure you have a clear understanding of your long-range goals."

The Federal resource agencies were challenged in these workshops (perhaps for the first time) to translate their concerns into the standards they use to review permits and to make decisions. Some of the agencies clearly did not have standards that could be translated into the terms of a plan. This realization was particularly frustrating for some local and state officials who had received criticism from these agencies because of the lack of specific standards in their plans. As several of the Task Force participants recalled, the standards and information used by the Federal resource agencies did not emerge during the first step of the process, but later during the negotiations.

Even though the resource agencies were out-numbered by local and port officials in these workshops, it appears that a balance in the negotiating positions was present, due to the higher legal authority of these agencies and the pressures from environmental interest groups. According to the consultants, this balance of power was extremely important to maintain throughout the negotiations. Without it, the weaker groups could have dropped out of the negotiations or might fail to endorse the end product, defeating the entire purpose of the plan. Since the planning process is still going on, this remains a major concern.

As stated in the draft plan: "The Task Force operated on the concensus basis under the guidance of the consultant team, to discuss key issues, evaluate alternative courses of action and arrive at critical decisions."

At the completion of the last workshop, the consultant team prepared a first draft of the management plan.

Step 3. Review of Draft Plan

The draft management plan is still being reviewed by the various jurisdictions and agencies represented on the Task Force, and the general public.

A formal public hearing was held on the draft Tuesday, February 21, and numerous smaller meetings are being held to discuss the plan by the consultants and members of the Task Force. This is the critical stage in the process in which each Task Force member takes the plan to their constituents or member organization for ratification, again, similar to the labor negotiations process.

Several members of the Task Force observed a curious change in attitude by the members at this stage in the process. They were all generally pleased, even euphoric, over the accomplishments, while at the same time uncomfortable with what each had given away to the other side in the negotiations. Even more important during this phase, the members of the Task Force became advocates for the compromise plan. For example, Bob Bowker of the U.S. Fish and Wildlife Service, an ardent environmentalist, finds himself defending the Port of Grays Harbor and their compromise proposal for filling 250 acres of the harbor. On the other side, local and port officials are found supporting state and Federal demands for protection of the harbor to protect fishery resources.

This step in the process will also reveal whether the Task Force membership sufficiently represented their organization's interests and the broader views of their constituent groups. The strategy of involving only public decision makers in the Task Force will also be tested. Some of the organizations and interest groups that felt left out of the planning (the Federal Aviation Administration, the State Department of Transportation, and the environmental interest groups) could upset the delicate balance of agreements reached in the draft plan. If their views are not adequately considered, or if their influence over the formal adoption of a plan that does not sufficiently accommodate their interests is strong enough, the Grays Harbor Planning process may have to continue. However, some of the agencies indicat that if there is not 100 percent concurrence with the plan, it could still be implemented if enough of the state and Federal permitting agencies were to adopt it (formally or informally) for their review of permits. Of course, no one was advocating this at this stage.

Step 4. Workshops on Final Plan:

This stage of the plan has started while the public and agency review continues. Based on the comments received during the broad public and agency review of the draft plan, additional workshops of the Task Force will attempt to reach agreement on any changes in the plan. The final draft of the Estuary Management Plan will then be prepared based on the Task Force changes. A Task Force meeting was held on February 27, in which major substantive interpretations of the plan were discussed, including fill proposed for an Ocean Shores airport expansion.

Step 5. Formal Adoption:

Each of the agencies and units of government will be expected to go through its usual procedures to review the plan and hear public comment on changes to their existing plans and ordinances necessary to implement the plan. It is expected that most units of government will adopt, endorse and fully implement the plan. The Regional Planning Commission may prepare a State Environmental Policy Act impact statement on the plan. Since the endorsement of the plan by the Federal resource agencies may commit these agencies to future decisions on dredge and fill permit applications, for example, a NEPA environmental impact statement may be needed. The Corps of Engineers currently claims that it will not "formally" adopt the plan, but will prepare NEPA statements on individual permit applications as appropriate.

The Estuary Management Plan:

The draft plan established eight management categories, or land use classifications, for natural, conservancy natural, conservancy managed, rural agriculture, rural low intensity, urban residential, urban mixed and urban development. The intensity of use allowed is generally greater from the natural to urban development. The earlier shoreline master program had only four categories.

The entire 55,000 acres of the estuary is divided into eight planning units, each representing a common set of natural and man related features. General guidelines are established for each area. Within these planning areas are 44 management units, each assigned one of the management categories. Each of the management categories carries with it a set of standard uses, which are either permitted or potentially permitted based on conditional use review (case by case). Each management unit also has a statement of management objectives, permitted activities and a set of special conditions that relate to that management unit only.

As a result of this successively greater detail in the plan the policies of the plan became very specific, leaving very little doubt as to what uses and activities will be permitted or be subject to conditional review. However, some would argue that considerable clarification is still needed in some areas.

The plan is for a 50 year time frame with explicit procedures built-in for annual and 5-year review, and for amendments.

The major compromises that were reached in the draft plan include:

a. The Port of Grays Harbor agreed to abandon its plans for the development of 2200 acres of submerged lands along the harbor's northern shore, for assurances that it could develop 500 acres between the Bowerman Air Field and the shoreline in Hoquiam over the next 50 years. This amount was split in half, so that only 250 acres would be allowed until the need for the additional fill is demonstrated and the detailed plans for the first segment are subjected to special review by affected agencies. No decision was made on the use of this area after 50 years. It could remain in its natural state or be developed.

b. The remainder of the Port's 2200 acres is to be transferred to a designated state resource agency for 50 years, to be managed for resource purposes.

c. Further major filling of the submerged lands was limited to bankline straightening or bankline erosion control in the least naturally productive portions of the harbor.

d. Long-term policies for relocation of non-water dependent uses along the harbor, such as an airport, was approved subject to the location of a suitable alternative site.

Accomplishments of the Grays Harbor Experience and Lessons for Coastal Zone Management:

If the Grays Harbor Estuary Management Plan is adopted and implemented as designed, continued conflicts over each individual permit or development activity in the estuary will be avoided. Experience of a similar process in Yaquina Bay, Oregon nearly 10 years ago indicates that all of the agencies are willing to abide by commitments in the plan, if they are adequately involved in its preparation.

CZM Lesson 1. Affirmative consistency of Federal agency actions on permits is obtainable, if the principles and standards by which the agency acts on permits can be agreed upon in a geographically specific plan.

Predictability of public action can be assured through adoption of a specific plan which embodies the consensus positions of all public agencies having jurisdiction and authority over development in a particular geographic area. If the process is completed successfully, the Port of Grays Harbor, the local governments, private property owners, and other interests will have a clear understanding from government agencies as to what can and cannot occur in the harbor and under what conditions. This predictability should lead to lower costs for applicants, more efficient use of public employees at all levels of government, and a stabilization of the speculative value of land in the harbor. The harbor could become more attractive to investors and permits for development should be significantly expedited.

This level of predictability should also provide a greater degree of assurance that the natural productivity of the estuary will be maintained or enhanced during the long-term life of the plan.

Lesson 2: Special area planning which translates coast-wide policies into detailed plans and involves all decision makers directly in the process will provide the level of predictability that will benefit development and conservation interests alike. Predictability will be one of the primary incentives to Ports and other economic development interests, if their support for CZM is to be obtained and a proper balance in CZM is to be maintained.

The Grays Harbor planning experience is having a major effect on how the participants will approach future intergovernmental problems. The awareness of the decision makers to the problems and duties of officials in other levels of government has been enhanced. This greater awareness should smooth intergovernmental relations for other communities and other states in the future. The resource agencies have been sensitized to the needs for economic development and the fiscal problems of local governments and the ports.

Local officials and citizen groups have become much more aware of the needs to sustain the natural system of the estuary and the factors which adversely affect this system.

Lesson 3: Collaborative planning, by all levels of government having jurisdiction and authority in a geographic area, will accomplish the kind of consistency for intergovernmental action intended by Congress in the CZMA. Many of the problems with implementation of the Federal consistency provisions of the CZMA to date may stem in part from the difficulty of obtaining concensus and direct involvement of all levels of government over an area as broad as an entire coastal zone of a state.

Problems and Unanswered Questions in the Grays Harbor Process:

a. The Inland Boundary:

The Grays Harbor Planning Area was established on the landward side by a line where clear existing state and Federal jurisdiction over decisions affecting the harbor extended. This area generally did not include upland areas much further than the 200 ft. inland dimension from mean high waters, from the Shoreline Management Act, or beyond the Corps of Engineers 404 permit jurisdiction. The entire watershed of the estuary was considered to be too broad an area to realistically plan for, when the major conflicts were taking place at the water's edge or in adjacent shorelands of the harbor. The size of the Task Force and the number of issues to be resolved also had to be kept to a manageable size if the process was to succeed.

The Friends of the Earth have criticized the limited boundary of the planning area and the lack of attention to upland problems of land use that adversely affect the quality of the estaury. These may be valid concerns, in a technical sense, and may need to be addressed in subsequent planning activity. However, it was not within the jurisdiction authority of enough of the members of the Task Force to address these concerns through the Grays Harbor Estuary Management Plan. OCZM should closely monitor the "second tier" management activities of the state's CZM program to assure that, if these management problems do exist, the program adequately addresses them in subsequent planning.

b. How the Planning Process Relates to NEPA:

There may be inherent similarities between the Grays Harbor Planning Process and the environmental impact assessment process prescribed by the National Environmental Policy Act, but there is a current dilemma for the Federal agencies participating in the process. If the Federal agencies are expected to endorse the Grays Harbor Plan, which prescribes the filling of 500 acres of the harbor over 50 years, is this a "significant Federal action" requiring an Environmental Impact Statement? If so, when should the NEPA statement be prepared? During plan preparation, while alternatives are considered? At the time of the completion of the Draft Plan? When the state's CZM program is amended or refined to modify the local Shoreline Master Program? Or, only when individual applications are received by the Corps of Engineers or other agencies on specific projects carried out consistent with the plan? Is it possible to draft a NEPA impact statement that will fulfill the need for public review of the plan (and its alternatives and impacts) at all levels of government, or will decisions made by one level in advance of the EIS foreclose the review of options available to the Federal agencies.

The Corps of Engineers and the resource agencies are initially resistent to preparing a "programmatic" EIS on the draft plan, claiming that they have no formal action that would trigger such a process. To date, both the Washington Department of Ecology and the Office of Coastal Zone Management are undecided on the issues of whether a NEPA EIS will be required, when it would be done, and what significant Federal action" would trigger its preparation. These decisions could establish precedents for future amendments to state CZM programs related to routine amendments to local coastal zone management programs or to the implementation of geographic areas of particular concern established in state programs.

The relationships between the planning and NEPA processes also need to be explored in depth before proposing the Grays Harbor process in other areas where Federal endorsement will be sought. If the end result of the conflict resolution process depends upon reaching concensus among public decision makers over specific planning issues, how can the spirit of the NEPA process, which does not foreclose options until after full public review of the impacts of alternatives, be maintained? For example: If the key to getting agreement on the Grays Harbor plan was the trade-off decision on the Bowerman Field fill site, can other alternatives for this decision be excluded during the NEPA review process on the plan? How flexible is the final decision on this particular issue, when the public and the environmental interest groups have not had the full opportunity to review the impacts of this decision?

These questions should be explored immediately with regard to the Grays Harbor Draft Plan, and in further detail with regard to the planning process before the Grays Harbor "model" is promoted in other applications in the state, or other states.

Summary:

The Grays Harbor estuary management planning process has the potential for significantly advancing the art of coastal zone management to overcome several of the following criticisms frequently heard in interviews with those affected by the programs:

- CZM programs tend to be only "negative" and only apply additional layers of government to prevent things from happening in the coastal zone. They do not provide anything positive in terms of sorting out existing governmental regulations and permit procedures.
- programs are not specific enough to provide policy guidance for basing Federal agency or private, state and local development decisions.
- programs do not provide the level of predictability necessary to base major long range investment decisions.
- programs are too conservation oriented, and do not provide for a "balancing" of development interests for the overall public welfare.
- Federal consistency is limited to preventing Federal agency actions that are inconsistent with CZM programs, but do not encourage or require affirmative actions by the Federal government to carry out such programs.

Regardless of the merits of these criticisms of CZM programs, the Grays Harbor process, if successful, could accomplish what the critics think is needed in coastal zone management.

The process could become a prototype which deserves greater Federal encouragement in other coastal conflict situations, perhaps through amendments to the CZMA to provide for affirmative Federal consistency tied to such a process, and additional financial assistance.

COASTAL ZONE MANAGEMENT 1980 --
A Context for Debate

The Conservation Foundation
March 1980

The Grays Harbor Estuary Management Plan:
Planning to Resolve Coastal Conflicts

Coastal resources serve many natural and economic functions. Federal, state, and local agencies are involved in both resource protection and economic development along the coasts. Their missions, not surprisingly, frequently overlap and conflict, frustrating sensible conservation or delaying desirable investment and driving up its cost. The federal Coastal Zone Management Act seeks, in part, to coordinate these overlapping programs, to reduce delay, and to secure the objectives of coastal resource use more expeditiously. One way to move toward these goals is to engage in planning programs to identify coastal resources and clarify regulatory controls over them before significant development is proposed. One widely publicized effort to plan in this way is occurring at Grays Harbor.

The Setting

Grays Harbor, 62,000 acres of water, tidal marsh, and partially developed shoreline on the Washington State coast 40 miles north of the Columbia River, is one of the handful of major coastal bays and estuaries along the Pacific Ocean from Alaska to San Francisco. Protecting the bay are two fingers of land on which fishing and resort towns, Ocean Shores and Westport, are located; threading between them is a shipping channel leading from the ocean inland past the cities of Aberdeen and Hoquiam, heavily industrialized ports with major wood-products factories. For Grays Harbor is not

just an important marine resource rich in fish and bird species; it also serves as Washington's major port with direct ocean access.

The conflict of economic expansion and natural resource protection in the harbor has been long and intense. Maintenance dredging for navigation and the filling of marshes for industrial sites altered 3,850 acres of intertidal habitat between 1940 and 1975. The Port of Grays Harbor, eager to diversify the economy to reduce unemployment and soften the effects of the area's dependence on the cyclical forest products industry, controlled 2,200 acres of wetlands it was willing to develop. Under existing shoreline plans, that land was zoned "conservancy," a designation requiring more rigourous review of development proposals than would be needed in "urban" areas, but which did not rule development out completely.

In early 1975, the Port applied for a permit to fill 45 acres, 39 of them wetlands, as the site for a proposed Kaiser Steel Corporation offshore oil drilling platform assembly yard. For the communities, the project seemed ideal, introducing a new industry. But to state and federal environmental regulators it was the last straw, another in a seemingly unending, uncoordinated series of attacks on the estuary.

The heated dispute came to involve United States Senator Henry Jackson, who suggested that the Port get its permit after normal review procedures, but no more filling be approved until a plan was created for the whole area. So, in late 1975, the Grays Harbor Regional Planning Commission set up an Estuary Planning Task Force, consisting of representatives of the Port, all nearby municipalities, and the eight state and federal agencies with regular jurisdiction over the harbor.* In August 1976, the Port got its permit and quickly filled the site, but Kaiser, citing changed market conditions, let lapse its option to build a facility there.

Several other existing management and planning activities affected the harbor area. Under Washington's Shoreline Management Act of 1971, the planning commission and local government had drawn up, and the state Department of Ecology had approved, "shoreline master plans." But these did not provide either resource agencies or the Port and local governments with the detailed guidance they sought in making development decisions. The same act designated Grays Harbor a "shoreline of statewide significance." The state Coastal Zone Management Program, which in June 1976 became the first state program approved for section 306 federal support, recognized the estuary as "an area of special concern." Following that designation and the filling of the Port's Kaiser site, federal coastal zone funds were provided to the planning commission to support the work of the task force.

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* The state departments of Natural Resources, Ecology, Fisheries, and Game; and the Corps of Engineers, Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service. Although the siting of airports in the planning area has come to be a significant issue, the Federal Aviation Administration was not on the task force.

The Planning Process

Participants in the planning process agreed that "the overall goal of the Grays Harbor Estuary Management Plan is the management of the estuary for multiple use." Recognizing that industrial development and resource protection had conflicted in the past and would continue to do so, participants hoped that the plan would make the outcome of proposed uses "predictable." "Once endorsed by each agency," a community information bulletin said, "it is a plan that a local city or the Port or an individual property owner can use to accurately determine whether or not a use or activity would receive approvals by the various reviewing agencies."

The task force began work by hiring consultants who spent six months, into the spring of 1977, gathering information for an estuary data base. The planning region included an area, much smaller than the whole estuary watershed, determined by the upland boundaries of various agencies' jurisdictions. The area typically extended inland no more than 200 feet from mean high water, or the limit of the area covered by the Shoreline Management Act or the 404 permit program administered by the Corps. While confining the planning area along jurisdictional lines this way made practical sense -- with a larger area, a greater number of agencies would have been involved, making it less likely that a plan for the intensely controversial estuarine shore could be evolved -- environmental groups, which were not made members of the task force, felt it was slighting natural resource planning. The data were used to distinguish eight planning areas based on land ownership, political jurisdictions, existing uses, possible or existing use conflicts, and physical boundaries or features.

The resource information was then used in six one- or two-day task force workshops over a sixteen-month period to draw up a draft plan. The Port and municipalities opposed the unpredictability and delay involved in presenting development proposals case-by-case. State and federal resource agency representatives (whose power came from their legal authority to review development proposals and issue permits) were determined to stop the piecemeal destruction of the estuary.

As negotiation began, the parties to it approached the problem in entirely different ways. One observer reports a biologist's reaction to the attitudes of the development agencies: "The first thing they say, not just in Grays Harbor but all over, is 'how much development does it take to have an impact?' It's as if I said to you, 'O.K., I'm going to start chopping off your fingers one by one. How many do I have to chop off before you become unfunctional?'"*

The initial suggestions for compromise reflected these differing interests. Some suggested that Willapa Bay, between Grays Harbor and the Columbia River, be kept pristine while Grays

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* Daniel Jack Chasan, "Compromise at Grays Harbor," Pacific Search, February 1978, p. 10.

Harbor was developed intensively. Resource managers, citing the value of Grays Harbor resources, demurred. Well then, why not develop the northern shore, and leave the southern shore alone? Because the northern shore is more productive biologically. The same argument arose when it was suggested that the industrial eastern end be developed completely.

The Port of Grays Harbor shocked federal agency representatives by proposing to fill all 2,200 acres of its land along the northern shore of Grays Harbor. Reducing the filling to 500 acres was more immediately palatable to resource managers who were used to considering the negative effects of filling fractions of an acre.

Ultimately, early in 1978 the negotiating process brought forth a draft plan. It established eight land and water use classifications (natural, conservancy natural, conservancy managed, rural agriculture, rural low intensity, urban residential, urban mixed, and urban development), twice the number present in the earlier shoreline master plan. Each of 44 management units in the estuary would be assigned to one of the zones or classifications, and tentatively associated with a set of standard uses permitted outright or after conditional review of proposed projects. Associated with each area was a statement of management goals and, where needed, of special conditions. The plan would guide the harbor's development for 50 years, with annual and five-year reviews, and an amending procedure.

The major compromise involved the Port's 2,200 acres. The Port could develop 500 acres over 50 years, in an area previously affected by uncontained disposal of dredge spoils, although half of the land could not be filled until need for it was demonstrated and detailed plans for the first 250 acres were reviewed by the relevant agencies. The first 250 acres could be filled at once and the plan found "a strict requirement for water dependent uses" there "inappropriate."* The second 250 acres could be filled when the Port had no more than 100 acres of nearby unutilized lands; the availability of unused sites elsewhere in the harbor would not cancel this condition. The remaining 1,700 acres would be transferred to a state resource agency for 50 years for management, on terms negotiated by the agency and the Port. While plan adoption would contradict the earlier "conservancy" classification for the Port's land, the plan would protect other areas in the estuary that were previously designated for "urban" (development) use. Elsewhere in the harbor, filling of submerged lands would be limited to straightening banks or controlling erosion in alread developed, less biologically productive areas.

Implementing the Plan

While securing agreement on the plan represented a genuine accomplishment, getting it adopted and implemented is proving to

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* Environmental groups, which oppose the filling, object to the plan's acceptance of "water related" rather than "water-dependent" uses as the development standard. They emphasize the magnitude of the proposed fill; the planners emphasize that less than one percent of the estuary would be filled overall.

be even more difficult. The task force and the planning commission are advisory bodies only; for the plan to become a functioning reality, local governments must incorporate it into their shoreline plans, and the participating federal agencies have to make it part of their policies for permit review. But during public review sessions, according to Patrick L. Dugan, the planning commission's executive director, "serious questions were raised regarding the legal ability of some federal agencies to make any sort of policy commitment to a plan of this nature. Since a uniform policy commitment by all state, federal, and local management agencies to future use of the estuary was perhaps the most important objective of our planning process, this question goes to the very heart of the plan."

OCZM decided that an environmental impact statement had to be filed since the Grays Harbor plan represents a significant amendment to the state coastal plan. The EIS will provide a forum for examining the alternative actions considered in drawing up the plan. For the proposed filling, alternatives included locating water-related industrial uses on Washington's ocean coast instead of in Grays Harbor. Alternative uses of individual filled sites will not be considered in the EIS, however, since filling would occur, according to the plan, before the proposed uses of filled sites were known.

The plan's success in making permits more "predictable" required the granting agencies to agree to bind themselves on the relevance of certain factors to their permit reviews. Yet some of those factors, such as conditions for section 404 permits, were and are subject to change as new regulations are written.

Grant Dehart, of OCZM, wrote early in 1979 that some participants were becoming disenchanted since the plan, which they had hoped would be in effect, was still only in the form of a discussion draft. "With some of the most controversial issues yet to be resolved," he said, "some agencies have begun to question whether such a process actually saves time."

The conditions that made writing the plan possible have raised unresolved procedural and substantive questions. Was it proper to convene a plan formulation task force that did not include representatives of public interest and private development groups? Environmentalists feel strongly that it was not. Should wetlands be filled for non-water dependent uses ancillary to port functions? Again, environmentalists think not.

So, while the Grays Harbor effort showed that agencies with different constituencies and mandates -- economic development as opposed to resource protection -- could cooperate in drafting a framework for future action, it is not yet a proved model of successful planning to resolve coastal issues.

> *"The lasting benefits that society derives from [wetlands] often far exceed the immediate advantage their owners might get from draining or filling them. Their destruction shifts economic and environmental costs to other citizens—often in other states—who have had no voice in the decision to alter them."*
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> *—The President's Message to the Congress, May 23, 1977*

COMPROMISE AT GRAYS HARBOR

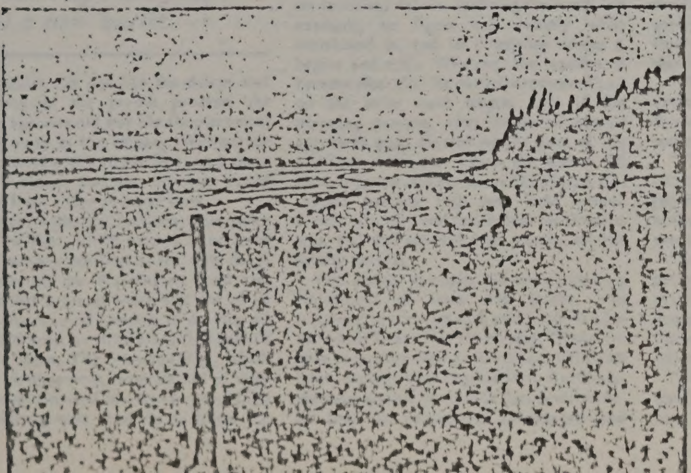
DANIEL JACK CHASAN

Brown mud slopes up gradually from the salt water's edge. Above the brown, the slope is coated by a growth of mossy green. Beyond that, an expanse of tall yellowish grass ripples in the wind. Not far from this patch of marsh, on the northern shore of Grays Harbor, stand the pipes and stacks and rusting metal buildings of a huge pulp mill. Logs float in booms along the shoreline, lie in great heaps on the land. Lift trucks pile them on the aging freighter *Seizan Maru* for shipment to Japan. The foul smell of pulp mill effluent rises from settling ponds. Nearby, the port-and-logging cities of Aberdeen and Hoquiam crowd down to the water's edge. In the distance, a great cloud of smoke rises from a slash burn in the eastward hills.

At first glance, it seems inevitable that sooner or later, the port facilities and industry will spread out over the marsh. Dredges will deposit their spoils along the shore. Bulldozers will flatten out the fill. Pavement will be laid, buildings erected, and an otherwise-worthless patch of land brought into the local economic system.

Left: at the mouth of the Willapa River in southwest Washington, the elegant tufted hairgrass, *Deschampsia caespitosa*, grows in the transition zone between salt marsh and uplands. Photo by Peter B. Taylor

Below: where salt and fresh water intermix in estuaries such as this, they provide a rich mixture of nutrients that are the basis of the food chain for fish, wildlife, and people. Photo courtesy Washington Game Dept.



Not long ago, that transformation probably would have been inevitable. It is not inevitable now, largely because there are people in government agencies who do not consider the land worthless and will fight tooth and nail to prevent the wholesale filling in of this or any other estuary. In Grays Harbor, they've been fighting for some time.

Estuaries—enclosed arms of the sea in which salt water meets and mixes with fresh—are valued by biologists for the great quantity and diversity of life that feeds in the shallow waters and adjacent marsh. Phrases like "web of life" are often used to describe the complex ecosystems that flourish among the eelgrass and pickleweed and bulrushes and sedge, and the biological productivity of such areas is often compared favorably with the productivity of land given over to human agriculture. That field of yellow-green grass rippling in the wind produces more living matter per acre than anything human beings grow except a field of sugar cane. It dies down completely every year, decomposes, and ultimately nourishes everything in the food chain, from the brown diatoms and green algae on the mud to salmon, steelhead, and occasional whales in the water, and the ducks, herons, and other waterfowl in the air.

Grays Harbor, which covers some 55,000 acres on the Washington coast, is connected to the Pacific by a narrow channel that separates the spits of land on which stand the resort towns of Westport and Ocean Shores. Fresh water flows into it from the Chehalis, Hoquiam, and Humptulips rivers. It supports more than 50 species of fish, including salmon and steelhead spawned in the rivers, large populations of oysters, clams, and crabs, and 325 species of birds, one-third of all the species found in Washington State.

A Western estuary the size of Grays Harbor "is such a rare thing," Nancy Thomas, president of the Washington Environmental Council, has remarked. "If you look down the Pacific coast from Washington, after Grays Harbor and Willapa Bay you have to go down to Coos Bay and San Francisco before you find another major estuary of this size. You don't mess around with it until you know what the impact will be."

Actually, people have been messing around with Grays Harbor since the beginning of this century. Aberdeen, Hoquiam, and the Chehalis River towns of Cosmopolis and Montesano have been exporting wood products ever since then, and the shipping channel has been dredged repeatedly. Spoils from the dredging have been deposited in marshy areas, and portions of the shoreline have become the habitat not of wildlife but of human commerce and industry. "Between 1940 and 1975, dredgings were dumped on about 3,850 acres of intertidal areas," game biologist David Mudd has written in *Washington Wildlife*. "We don't know how much eelgrass and salt marsh was lost, but 1950 aerial photos show eelgrass and salt marshes where upland areas now exist."

The filling of Grays Harbor according to the dictates of economics and convenience did not stop with the passage in the 1970s of the federal Water Pollution Control and Coastal Zone Management Acts, the resurrection of the federal Rivers and Harbors Act of 1899, or the passage of the state Shorelines Management Act, but its progress became much less swift and sure. Federal and state agencies that were committed more to the preservation of the natural environment than to industrial progress gained both the power and the willingness to hold up permit applications indefinitely, and they began to use that power. Boise Cascade had an application for waterfront filling held up for two years. Finally, the company announced that if its application wasn't approved within two weeks, it would abandon its expansion plans. The Port of Grays Harbor and the nearby municipalities, conscious of the area's high unemployment and its limited attractiveness to industries not dependent on logs, were eager to have Boise Cascade go ahead. Pressure was applied, and the permit was granted—with the understanding, however, that Boise Cascade's would be the last major permit granted before all interested parties had developed an overall plan for the estuary.

Biologists value estuaries for the profusion of wildlife they support. But portions of the Grays Harbor shoreline now support commerce and industry, not wildlife.

Things didn't work out that way. It wasn't long, in fact, before a much more ambitious and much more intrusive filling project was on the drawing boards: the Kaiser Steel Company wanted to fill 45 acres, including 39 acres of wetlands, to create a site for the assembly of offshore drilling platforms. The Port was delighted. The Grays Harbor area depends heavily on the forest products industry, with its wild swings in employment. Here was a chance to get an entirely new kind of industry.

The "resource agencies" (those state and

federal units responsible for protecting natural resources) opposed the fill. But local officials wanted it very badly, and besides, the manufacture of drilling platforms seemed to further the national policy of developing domestic energy resources. A lot of political pressure was brought to bear. Finally, Senator Henry Jackson's office got into the act. The Kaiser project should go ahead, Jackson's representative said, but the practice of fighting over every permit application that came down the pike had to stop; after the Kaiser permit was approved, all the contending parties had better work out a plan for the estuary. (The filling was done right away; but at this writing, ironically, a poor market for drilling platforms has kept Kaiser from building anything on the fill.)

This time, something happened. At the end of 1975, the Grays Harbor Regional Planning Commission set up an Estuary Planning Task Force, which included representatives from the Port of Grays Harbor, all the nearby municipalities, and the eight state and federal agencies that had some form of jurisdiction in the estuary. The first step was hiring the Salem, Oregon consulting firm of Montagne-Bierly Associates to coordinate the planning process. (In the early 1970s, as an Oregon state official, Roland Montagne had presided over the creation of a successful management plan for the lower Willamette Valley.) Montagne's first move was to assemble a technical committee to compile the necessary information. Then, in February, 1977, the Estuary Planning Task Force began to work out a plan.

The Task Force was a wildly disparate group, united only by a common dissatisfaction with the way things were going and a common apprehensiveness about the future. The Port and municipalities did not like the delays and uncertainty of the permit process; the resource agencies did not like the piecemeal nibbling away at the estuary. Without an overall plan to which all parties agreed, there was little chance that the situation would improve from either point of view.

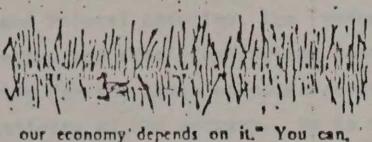
Without an overall plan, every development proposal meant a new battle.

To begin with, the factions were poles apart. The Port, which wanted to preserve Grays Harbor's position as the only deep-water port on the Washington coast and realized that a lot of space was one of its chief assets, wanted freedom to develop all of the 2200 acres it owned along the harbor's northern shore. The municipalities, which favored development, were jealous of their local jurisdiction and resented any meddling by outside agencies. And the meddlers, the people from the resource agencies, were determined to stick to their guns and approve filling only on a case-by-case basis.

They felt that any loss of wildlife habitat in the estuary was significant.

"The first thing they say," one biologist observed, "not just in Grays Harbor but all over, is 'how much development does it take to have an impact?' It's as if I said to you, 'O.K., I'm going to start chopping off your fingers one by one. How many do I have to chop off before you become unfunctional?'"

The resource people and outside observers from the environmental movement would have been happy to see dredging and filling in Grays Harbor stop completely. Liz Greenhagen, a vocal Ocean Shores resident who has followed the planning process from the beginning—she refers to herself as the "token environmentalist" in the cast of characters—says that has never been realistic. "You can come down from someplace else," she says, "and say, 'wouldn't it be nice to save a whole estuary,' but you can't really do that. Living here you can't just be anti-dredging, because our economy depends on it." You can, however, try to "show the port and great planning authority that the estuary is good for something besides dredging and filling."



When the various interested parties sat down together, approaches to planning differed sharply. Local officials were more interested in specific development projects—a Thunderbird Motel turned out to be a big one—less interested in the generalities of planning, and much less at home with the maps and charts and technical data with which the plan was being forged. Resource people, partly because of their backgrounds, focused more intensely on technical details, realizing the need, for example, to figure out exactly what marshland is, and to determine where it begins and ends. Whatever the reasons, it became clear that the participants weren't all on the same wave length. Late in the planning process, after hours of heated argument over developing the part of the northern shore (on which the Kaiser fill already jutted into the water like a huge, rip-rapped parking lot), one local mayor consulted a map and concluded that the area was, and was scheduled to remain, all but totally natural.

This group, as edgily self-conscious as a convention of lions and lambs, was supposed to come up with a detailed plan for the whole Grays Harbor estuary. Observers have compared their proceedings to difficult labor-management negotiations. Certainly, the more intense sessions fit that description. At first the consultants (Montagne and Gordon Davis of the firm of Wilsey and Ham, who actually ran the meetings) steered the group away from the touchier subjects. And within the sessions, there was some pressure to avoid conflict by simply abandoning certain areas to development. The resource people resisted. Why not just keep Willapa Bay largely unspoiled and develop Grays Harbor intensively? Because Grays Harbor was valuable in and of itself, and habitat lost there would not be replaced. Why not preserve the south shore of the Harbor, which now, except for pilings and log booms, presents a largely unbroken line of marsh and alders, and develop the north? Because the north side is more productive, and again, habitat lost is habitat lost. Why not forget about the largely developed area around the eastern end of the Harbor, most of which was already zoned commercial and industrial, and preserve portions closer to the ocean? Because with a higher percentage of fresh water and with finer sediment, the eastern end was more productive. And so on.

The touchiest area of all was the one behind the airport, Bowerman Field, on the northern side of the main channel. When this area came onto the agenda, the meeting lasted far into the night and resumed the next morning. One side would caucus, then come in and present a proposal. The other side would then caucus, and come back with a counter-proposal.

The area "is the subject of quite a battle between the Port of Grays Harbor and environmentalists," *The Aberdeen World* reported. "The Port wants to fill the land—three square miles of it if possible—with dredge material and lease it to heavy industry, while representatives of state and federal agencies have indicated that they would like the expanse of grassy marshland preserved....When [Hank] Soike [general manager of the Port] indicated the Port's wishes by sweeping his hand across an aerial photograph of the area....a couple of the resource agency representatives gasped indignantly....[Stan] Lattin [planning director of the Port] then directed the group's attention to a large map, where the Port's version of an adequate industrial site was blocked out in purple....

" 'No way would we allow filling of that entire purple area,' said Ron Lee of the Environmental Protection Agency. 'It's just too expansive.'

" 'That's more fill than I think we'd look at nationwide in five years,' [Chuck] Walters [of the National Marine Fisheries Service] added. 'This kind of a chunk is like giving you several gold mines. I just can't see it.'

"Soike then offered to cut the Port's proposal by two-thirds, but when the resource representatives received no assurance that the Bowerman Field site is the only major filling planned, the task force stalemated....

"Said Walters: 'I just spent a week testifying against a sixth-of-an-acre fill, and now I have a 500-acre fill proposal. I don't know how that's going to go over....' "

Eventually, the two sides worked out a compromise: the Port would limit its expansion plans to 500 acres over the next 50 years. The resource agencies would resign themselves to the development of those 500 acres. Both sides had made significant philosophical concessions. The Port was renouncing for 50 years the right to do as it pleased with land it owned. The resource agencies were renouncing the right to protect the development of 500 acres of the most preciously productive habitat on earth. For people used to haggling over sixths of an acre, the idea was staggering.

The compromise could set a national precedent for settling wetland disputes.

"The Fish and Wildlife Service basically got the short end of the compromise," suggests Dale Jones, Northwest representative of Friends of the Earth. "The Fish and Wildlife Service tries—the people who worked on this should get a pay raise—but politically, they just don't have the muscle to cope." Another observer suggests, though, that "the resource agencies have been viewed as kind of poor boys, and they like that image, but don't kid yourself—they pull a lot of power out of Washington, D.C. I don't think they got the short end of the stick in Grays Harbor. I think they got a pretty good compromise." Certainly, the municipal officials—who must live with their constituents, as well as the plan—felt that they had given up a great deal, too.

In fact, a good many of the people involved probably felt like those described by the wise old attorney who noted that in a "good settlement" both sides always go away from the table "a little sick to their stomachs."

By now, the whole estuary has been divided into planning areas, and detailed specifications agreed on for the amounts and kinds of development that can take place in each of them. All the participants have approved the plan. Now, if it is to be more than an abstract declaration of intent, it must be incorporated into local zoning codes.

A lot of people far from Grays Harbor are watching closely to see just exactly what it does become. Because Washington was the first state to gain federal approval for its Coastal Zone Management Act, the planning done in Grays Harbor with Coastal Zone Management money is viewed as a possible precedent. "We think this has national significance," says Hank Soike, manager of the Port of Grays Harbor, and Montagne says the plan marks "the first time something like this has been done on this grand a scale."

And because—with President Carter's executive order of May 1977—saving wetlands has become a national policy, ports all over the country are more than casually interested in how conflicts between wetlands and port development are worked out. The Northwest offers a couple of interesting examples in addition to Grays Harbor. In the port of Everett, Washington, a conflict between preservation and development is being worked out through mediation. In Oregon, a state law now says that before any part of an estuary can be developed, the development must be formally judged to be in the public interest. If it is judged in the public interest, then any loss of estuary habitat must somehow be "mitigated." At Coos Bay, when the airport expanded out into the estuary, the loss of habitat was mitigated by returning an equal portion of the bay, enclosed behind old dikes, to its natural state.

Ultimately, the people who have grown concerned about the Grays Harbor estuary believe that the essential job is not planning, but education: the public must be taught the value of estuaries in general. An understanding of the processes that go on there is crucial, because no one is going to make an effort to save marshes or eelgrass beds for themselves. "One of the problems we have with estuaries," says Dale Jones, "especially the Washington estuaries, is that they don't have the beauty of a Mount Rainier." Bob Bowker, a Fish and Wildlife Service biologist who served on the Estuary Planning Task Force, suggests that people must learn "to tie the habitat to the critters"—that is, to realize that the profusion of fish and animals that they value can't exist without the marsh and grassy water that they don't value.

In the Grays Harbor area, commercial fishing, sport fishing, and tourism all depend on the salmon and steelhead that pass through and spend varying lengths of time in the estuary. If you ask a state Game Department biologist why one should even try to save areas near the huge Rayonier pulp mill, for example, he may reply that all the anadromous fish that spawn up the Chehalis and its tributaries must pass by that point. The mouth of the Chehalis is already heavily developed. Steelhead planted upriver by the state return at a rate of .5%. Farther west, in the largely undeveloped Humptulips, the rate of return is 5%.

So far, there has been no outpouring of sentiment in favor of saving the estuary for the fish. But Stan Lattin suggests that the planning process has educated many of the participants and various other local civic leaders, if not the public at large, to the fact that the issue is not simply one of saving worthless mudflats. By now, he says, when those people look at the estuary, "they know that something's going on there." That alone, he believes, is enough to justify the time and effort spent on planning. Greenhagen almost agrees. "I'm interested in reaching more people," she says. "It's bigger than just Grays Harbor."

IMPROVING THE REGULATORY ENVIRONMENT BY MEANS OF COOPERATIVE ADVANCED DECISION MAKING: THE GRAYS HARBOR EXPERIENCE

BY PATRICK DUGAN

The Grays Harbor Estuary Management Program is an innovative and complex process intended to simplify and expedite the management of the estuarine system by means of cooperative advance decision making by all affected agencies at all levels of government. By melding the diverse interests of local government and the Port authority with the management objectives of State and Federal agencies, its fundamental purpose is to balance the competing and often conflicting demands on the estuary. It seeks to provide for the basic economic needs while conserving the long term productivity of the estuary. It is expected that if fundamental management issues can be resolved in advance by means of a cooperative and comprehensive process, future decision making on individual permit proposals would be expedited in a predictable fashion. In other words, if successful, the program should both simplify a highly complex regulatory system and improve the quality of the decisions that the regulatory system makes. While the process has not been completed, it has demonstrated that the operation of such a process by itself can improve the regulatory environment and that highly complex issues can be effectively resolved by means of cooperation.

Background[1]

The Grays Harbor Estuary Management Program grew out of a long history of acrimonious and hostile relationships between various Federal and State agencies and local governments. These relationships grew out of the independent mandates to each one of those agencies at every level of government to protect particular environmental resources or achieve particular economic development goals. Very little coordination of those policies and programs was occurring, in spite of various programs such as Coastal Zone Management which was intended to resolve these goal conflicts.

Even though the Grays Harbor area had previously prepared, and the Washington Department of Ecology had approved the Grays Harbor Shoreline Master Program, it did not resolve the conflicts between the local governments, the Port, and the State and Federal resource agencies over major development proposals in the Harbor. On the one hand, the resource agencies claimed that the earlier plan was done without adequate resource information, that the plan was too general to be used for permit decisions, and that they had not been adequately involved in its preparation. On the other hand, the Port and some local governments found the earlier plan to be too restrictive when literally interpreted, precluding further growth in an area where industrial growth is confined to a narrow space between the hill slopes and the water, and where periodic dredging of the Harbor channel requires disposal of dredged materials. Conflicts over several Port developments and other developments in the City of Aberdeen reached a climax with an application by the Port for a permit to develop a site on which to assemble offshore drilling platforms.

The confrontations over these projects frustrated the interests of all parties in the decision process. The Port's development plans were stymied by State and Federal agency objections to permits applications. Local Government decisions were overturned by State agencies, blocking development plans in areas designated "urban" in the state approved Shoreline Master Program. State and Federal resource agencies were subject to intense political pressure from elected officials at all levels of government over specific permits and from environmental interest groups trying to stop further filling of the estuary. Congressional office support, especially Senator Jackson, was being taxed by repeated pleas from constituents and agencies on each project. In general, all were being frustrated by their inability to predict the outcome of the various public decisions that were being made. Senator Jackson's office insisted that all parties get together and resolve these issues in a more comprehensive and rational manner. This ultimately led to the Fish and Wildlife Sevice conditioning a permit approval to require an estuary management plan so the subsequent incremental effects of individual permits could be evaluated. Such incremental effects was one of the Service's primary concerns regarding what was

occurring under the existing permit system.

This requirement resulted in securing a Coastal Zone Management grant, which was recognized as a vehicle appropriate for resolving management issues, and the Grays Harbor Regional Planning Commission (an association of local governments) was selected as the sponsor of the planning process. Grays Harbor Regional Planning Commission then formed a Task Force of five cities, one county, one port district, four State agencies and four Federal agencies. The purpose of the Task Force was to get all agencies into the same "room" to see if there was some way that all their independent mandates could be reconciled into a cohesive policy upon which the public could rely. This process would consider, in a long range and comprehensive manner, what is needed to protect the natural productive capacity of the ecological system, and what would be needed for the system to perform its economic functions; along with many other roles the estuary plays. This approach, then, would result in a "plan" which would address the many competing demands on the estuary in the form of policies and use designations. While it was understood that such a plan could not replace the existing permit authorities, it was expected that it would guide decision making under those authorities in much the same way that city comprehensive plans guide zoning decisions. By addressing long term issues, needs and impacts, this approach could correct the deficiencies in the present system.

The Planning Process

With the financial support of the Office of Coastal Zone Management through the Department of Ecology the Regional Planning Commission hired a consulting firm to design and carry out a planning process.[2] The planning process involved a two-phased approach; the first phase would collect information and analyze the ecological and economic systems in order to understand the nature of the myriad of issues and problems that must be addressed and resolved. This phase also involved an outreach to the public involving as many interest groups and interested individuals as could be identified. Individual meetings, and interviews with these groups and persons were conducted throughout the process. Thorough press coverage was encouraged and received.

The analysis phase was followed by a planning phase which first identified goals and general policies then progressed down to specific issues. The first action in the second phases was to identify the overall goal of the management plan. It was decided that the goal of the Task Force was to manage the system for multiple use. This rather innocuous sounding goal is one of the most significant decisions in the process, since it recognized that there is a range of legitimate uses that should be accommodated and balanced, and that management cannot only be directed toward special purposes. It was at this juncture that the process substantially departed from the existing regulatory system with each agency developing and administering a management program directed at its own special purposes. The recognition that multiple objectives must be accommodated drastically compounds the problems associated with a planning process. As Richard Babcock observed in "Babcock's Law"; "any beneficient public policy if pursued vigorously will inevitably conflict with an equally beneficient policy."[3] The decision to recognize multiple use in an estuarine system inherently recognized the existence of more than one legitimate public policy which will be pursued vigorously by various interest; and, hence, by Babcock's Law; result in conflict. Such conflict can only be resolved by extensive and complex negotiation.

The negotiating process took six, one and two day workshops, which were conducted over a 16 month period. Some of the parties entered into these workshop sessions with a definite strategy for gaining what they needed to obtain in the plan, while others were acting more on the basis of general principles that needed to be accommodated. The Federal resource agencies were challenged in these workshops (perhaps for the first time) to translate their concerns into the standards they would use to review permits and to make decisions. Some of the agencies clearly did not have standards that could be translated into the terms of a plan.

The Draft Plan

Early in 1978 this negotiating process brought forth a draft plan. It established eight land and water use classifications (natural, converancy natural, conservancy managed, rural agriculture, rural low intensity, urban residential, urban mixed, and urban development), twice the number present in the earlier Shoreline Master Plan. Forty-four (44) management units in the estuary would be assigned one of these zones or classifications, and each unit was tentatively associated with a set of standard uses permitted outright or after conditional occurring under the existing permit system.

This requirement resulted in securing a Coastal Zone Management grant, which was recognized as a vehicle appropriate for resolving management issues, and the Grays Harbor Regional Planning Commission (an association of local governments) was selected as the sponsor of the planning process. Grays Harbor Regional Planning Commission then formed a Task Force of five cities, one county, one port district, four State agencies and four Federal agencies. The purpose of the Task Force was to get all agencies into the same "boat" to see if those who [illegible] all their independent mandates could be reconciled into a unified policy upon which the public could rely. This process would consider, in a long range and comprehensive manner, what is needed to protect the natural productive capacity of the biological system, and what would be needed for the system to perform its economic functions, along with many other roles the estuary plays. This approach, then, would result in a "plan" which would address the many competing demands on the estuary in the form of policies and use designations. While it was understood that such a plan could not replace the existing permit authorities, it was expected that it would guide decision making under those authorities in much the same way that city comprehensive plans guide zoning decisions. By addressing long term issues, needs and demands, this approach would correct the deficiencies in the present system.

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The negotiating process took six, one and two day workshops, which were conducted over a 15 month period. Some of the parties entered these workshop sessions with a definite strategy for getting what they wanted to obtain in the plan, while others were acting more on the basis of general principles they wanted to be represented. The Federal resource agencies were challenged in these workshops (perhaps for the first time) to translate their concerns into the standards they would use to review permits and to make decisions. Some of the agencies clearly did not have standards that could be translated into the terms of a plan.

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The "balance" of the draft plan was established by increasing environmental restrictions in some areas to protect key resources that the resource agencies felt were particularly in jeopardy with the existing policy, and on the other hand, making commitments to assure the local development community that its needs could be met in the future.

In specific, the major compromises that were reached in the draft plan included:

- The Port of Grays Harbor agreed to abandon its plan for the development of 2,200 acres of submerged lands along the harbor's northern shore, for assurances that it could develop five-hundred (500) acres between the Bowerman Air Field and the shoreline in Hoquiam over the next fifty (50) years. This amount was split in half, so that only two-hundred fifty (250) acres would be allowed until the need for the additional fill is demonstrated and the detailed plans for the first (1) segment are subjected to special review by affected agencies. Control of the remaining part of the Port's 2,200 acres was to be transferred to a designated state resource agency for fifty (50) years, to be managed for resource purposes.
- Much greater restriction was placed on the development of the urban waterfront in order to ensure a viable migratory fish passage.
- The vast bulk of the estuary would be protected by means of increased restrictions.
- The amount of area designated as urban would be reduced and the amount designated as conservancy increased.

Basic Issues Raised By The Draft Plan

While the Task Force was reviewing this draft of the plan, some environmental interest groups organized opposition to the plan; EPA was considering revisions to Section 404(b)(1) of the Clean Water Act that could affect major proposals in the plan; and the Office of Coastal Zone Management together with participating Federal agencies, started preparing a Joint Draft Environmental Statement in anticipation of formal amendment to Washington's Coastal Zone Management program. Those events along with the draft plan began raising several basic issues which included:

- What amount of direct involvement must be given to private interest groups in the plan formulation (must these groups be formally included in the Task Force itself)?
- To what extent can a planning process proceed in advance of the formal institution of the NEPA process.
- How can the formal reviews, EIS and various approval processes, be coordinated with so many layers of governmental decisions involved, (e.g. local plan amendments, State Shoreline Management Act approvals, Federal agency approvals, and amendments to the Washington Coastal Zone Management program)?
- How much can future Federal permit determinations be committed in a plan for the sake of predictability?
- Whether the 404(b)(1) guidelines requiring consideration of alternative development sites can be met generally through such a planning process, instead of evaluating specific alternatives for specific uses on a case by case basis as in the permit process.
- Whether making the plan legally or formally binding on participating agencies will inhibit their cooperation in future planning efforts?
- Whether the State designated Shoreline area is an adequate planning area for estuary management.

Resolution of Basic Issues

During the remainder of the planning and review process each of the basic issues and many others were debated at all levels of government. The result of these discussions at all levels of governments was continued modification of various segments of the plan to accommodate how the resolution of these various issues were proceeding. Two particularly significant types of changes were occurring:

1. First many changes were being made to permit a clearer relationship between Section 404 considerations and the plan itself. The basic problem consisted of a difficult process of reconciling long range planning (which inherently involves some speculation about future events and needs) with the requirements of

regulations (which mandate that specific tests be met before any proposal can be approved). Resolution of these types of questions was generally achieved by specifying the degree to which the specific 404 tests could be met in a long range plan. This required careful and artful drafting of various plan provisions in order to achieve any degree of predictability.

2. Some environmental interest groups had particular problems with the fill proposals in the Bowerman basin area. They exerted considerable pressure on various participating agencies to reconsider these provisions. A particularly significant issue raised by these groups was the potential impact that the proposals would have on the Peregrine Falcon, an endangered species.

All of this finally lead in late 1980 and early 1981 to two Task Force meetings to pin down all of the discussions and negotiations that had transpired during the last several years; and to provide ample opportunity for environmental interest groups to express their concerns. The result of the first meeting was to either resolve most of the outstanding issues or to set a specific process in motion to resolve them. In addition Office of Coastal Zone Management was specifically directed to request an endangered species determination on the plan, especially the potential provisions (in two alternatives) regarding the Bowerman Field Area.

The second Task Force meeting then resulted in a parodox; on one hand all issues except for the Bowerman area were resolved, but a negative determination was made by the Fish and Wildlife Service on the impact of both alternatives for the Bowerman area. Consequently the Task Force directed that a subcommittee (a Mini-Task Force) be set up to develop a new proposal which would not result in a negative determination. This was accomplished during the summer of 1981. This revised proposal received in December 1981 a non-jeopardy endangered species opinion from the Fish and Wildlife Service. A new draft plan incorporating this proposal is now being prepared and it will be published along with an EIS, which is being prepared by office of Coastal Zone Management. That EIS will include Memorandum of Understanding Between the State of Washington and the participating Federal agencies that established the manner in which the plan will be used by each Federal agency. This Memorandum of Understanding will in effect provide the commitment of the Federal agencies to the plan. The local commitment to the plan will be secured by the incorporation its provisions into the Shoreline Master Programs of each jurisdiction.

Although the planning process has not yet provided a final, agreed upon plan, the process has already resulted in substantial benefits to the area and the agency participants. As noted, the regulatory environment prior to the start of the process characterized by very acrimonious and hostile relationships. This environment resulted in complex and lengthy permit processes involving extensive study, processing and negotiating. Not only did this detract from effective decision making, it also was extremely costly to all participants. However, the estuary planning process has dramatically altered that environment. The open communication and mutal understanding fostered by the process has resulted in much more rapid and effective decision making on permits. Potentially complex and difficult issues have been successfully resolved and competing interests accommodated on several large projects during the last six years. This has more than compensated for the time and effort invested in the planning process by all participants.

NOTES

1. Over the years the Grays Harbor Process has been studied by many people. One particularly insightful analyst has been Grant Dehart of the Office of Coastal Zone Management. This section and the section on basic issues in this paper has been adapted by the author from his work.

2. The firm of Montagne Bierly, Salem, Oregon; was selected. They in turn subcontracted with the firm Wilsey and Ham in Portland to assist with some aspects of the process. In the later stages of the plan Wilsey and Ham assumed full responsibility for the project.

3. Richard F. Babcock, "Regulating Land Development; Some Thoughts In the Role of Government," in Land Use: Tough Choices in Todays World, Soil Conservation Society, 1977 Page 35.

CHAPTER II

CHAPTER II

THE CONCEPTS OF THE GRAYS HARBOR PROCESS

The Grays Harbor planning process was conceived as an intergovernmental planning and management program. This chapter will seek to present the views of several participants in the process on the purpose and function of such an effort. As such, each of the articles in this chapter address conceptually the planning process and not the substantive details of the Grays Harbor Estuary Plan itself contains. It is the advancement of and experimentation with these concepts that may be the most significant legacy of the Grays Harbor process.

The first article in this chapter is an article written by Pat Dugan, Director of the Grays Harbor Regional Planning Commission, for the Bulletin of the Coastal Zone. It was published in the April 1979 issue of the bulletin. It followed an article in the March issue by Grant DeHart which summarized much of his review of the progam as presented in Chapter I. Dugan's article outlines the basic role of the plan and the need for it as seen by the sponsoring organization. It also presents the process in its context as a planning problem.

One of the unique aspects of the Grays Harbor process is the support that it has enjoyed from the Port of Grays Harbor. The staff of the port has recognized the need to develop a predictable regulatory system in order for the port to adequately plan its future development. The second article in this chapter presents the views of the General Manager of the Port regarding why ports should support and participate in such program. This article was presented by Henry E. Soike in a panel discussion before the 66th Annual Convention of the American Association of Port Authorities, October 1977. Hank Soike has similarly advocated this approach before numerous gatherings of the port industry, and provides yet another perspective on the nature of this process.

In January 1980 the House Subcommittee on Oceanography (U.S. Congress) held hearings in Seattle on the renewal of the Coastal Zone Management Act of 1972. The subcommittee received verbal testimony from several of the participants in the estuary program, and received the third article in this chapter from Gordon Davis. These hearings

led ultimately to new sections being incorporated into the Coastal Zone Management Act which specifically provides for Special Area Management Planning.

Gordon Davis was one of the members of the consultant team that assisted in the preparation of the plan. In the latter stages of the process he was the prime contractor for the project. In his article he presents the role of the Grays Harbor process as a experimental program of intergovernmental planning. Gordon Davis is also the author of several articles and papers on the Grays Harbor process, and a similar process on the Coos Bay Estuary in Oregon.

In 1980 a new President with a significantly different philosophical perspective regarding coastal management was elected. With this election a host of new actors were brought into the process at the federal policy level. When they took office the policy issues of the Grays Harbor process were being extensively debated at the federal level. The fourth paper in this chapter was prepared by several local participants in the process in order to assist in communicating with these new officials. As such, it seeks to relate the concepts of the Estuary Plan to what these local officials saw as fundamental concerns of the Reagan Administration.

AMERICAN ASSOCIATION OF PORT AUTHORITIES

COMMITTEE III
SHIP CHANNELS AND HARBORS

PANEL DISCUSSION
"FINDING YOUR WAY THROUGH THE PORT PLANNING MAZE"

REMARKS BY
HENRY E. SOIKE, GENERAL MANAGER
PORT OF GRAYS HARBOR
"ESTUARY MANAGEMENT PLANNING - GRAYS HARBOR STYLE"

A.A.P.A. - 66th Annual Convention
Mexico City
October 24-27, 1977

Today I am going to talk about Estuary Management Planning -- Grays Harbor style. In order to accomplish my mission, I am going to discuss four words -- FRUSTRATION, COOPERATION, COMPROMISE and PREDICTABILITY.

Before I start, I want to suggest that my remarks should be applicable to most ports, however, representatives of United States ports may find more in common with Grays Harbor than our sister ports in other countries.

Grays Harbor is the only port with deep water access on the coast of Washington State. It lies midway between the Columbia River and the Strait of Juan de Fuca -- the entrance to Puget Sound. Grays Harbor is approximately 10 miles across and 12 miles long. This pear-shaped harbor covers an area of 90 square miles, of which 60 square miles is exposed tideflat at low water. The main navigation channel extends through the harbor approximately 12 miles to the cities of Aberdeen and Hoquiam, where deep water port facilities are located. Geologists call Grays Harbor a "drowned river valley", an area where the forces of nature are constantly at work trying to fill the harbor. Maintaining deep water navigation facilities under these conditions requires annual maintenance dredging.

The uplands surrounding the harbor are classified as the most productive timberlands in the North American continent. A mild climate, substantial annual rainfall, excellent soil conditions, coupled with ever-improving reforestation practices, assure continued growth of our primary timber industry.

Eight major rivers and countless creeks, all bearing annual migratory salmon runs, are tributary to Grays Harbor. This additional natural resource provides the basis for our secondary seafood industry.

Utilization of the estuary for handling and processing timber related products, as well as propagating and harvesting migratory salmon and other aquatic life, provides the major basis for conflict in use.

Historically, the Port has used some of the maintenance dredged material to create uplands for industrial development. This activity, of course, requires filling in of some tideflats and inter-tidal areas.

To a fish or game biologist, a tideflat is beautiful. Biologists call most of Grays Harbor a "biologically productive area." Of course, all of this translates into a classic confrontation, where FRUSTRATION is the norm. Various groups have gone about their business trying to manage the harbor to best suit their purpose, with little, if any, contact or coordination with other interest groups.

To the Port, it seemed that every project, every plan, was challenged. Proposals were delayed -- sometimes for weeks and months -- sometimes for years. Maintenance dredging in the channel had become a major problem. Because of the increasing opposition to disposal of dredged material on inter-tidal areas, it actually became questionable if Grays Harbor was going to continue as a deep water port. And so the stage was set by FRUSTRATION -- political figures at all levels of government who had been drawn into the fray, started to ask, "Is there a better way?" Our own U. S. Senator Henry M. Jackson, who had been caught between the "rock and a hard place" several times, was the first to point to COOPERATIVE PLANNING as a way out. Jackson's chief legislative assistant carried the message to a small group which represented the key interests around the Harbor. The message was: "Sit down and work this thing out."

U.S. GEOLOGICAL SURVEY
MENLO PARK
MAR 25 1983

COOPERATIVE PLANNING between the *15 governmental entities with interest or jurisdiction over the Grays Harbor estuary began almost two years ago. Seven local or county-wide municipalities have joined with four state and four federal agencies in this effort. Each agency appointed a delegate and an alternate to represent them on an interagency Estuary Planning Task Force.

After several meetings of the Task Force, it was obvious that professional help was needed to get the program moving. We were indeed fortunate to hire two skillfull planning artesans -- Rollie Montagne of Montagne-Bierley & Associates, and Gordon Davis from Wilsey and Hamm. They advised Task Force members to visualize the estuary from 20,000 feet and overcome tunnel vision zeroed in on specific controversial projects. Their planning knowledge, advice and counsel held the Study team together which reached agreement on a basic plan. Over a 16-month period, the Task Force met and, under the watchful eyes of our consultants, has worked its way through a long series of compromises and agreements.

At this point, I would like to say t any port that wishes to get involved in this type of planning process, make sure you have a clear understanding of your long-range goals. The process which is called planning is better characterized as negotiating, and like any other

negotiation, if you don't know what your bottom line is, you could end up giving away the store. Similarly, in this type of negotiation, you cannot expect to get everything you want. There is only so much pie, and it eventually must be carved so that all are satisfied with their piece; or in the alternative, as dissatisfied as little as possible.

I was pleased that all participants in our Task Force understood from the beginning that COMPROMISE was the order of the day, but make no mistake -- this is not an easy exercise. There are people who represent other interest groups who are just as dedicated as you are, and they are just as convinced as you are that they represent "right".

You might be asking the question, "Why should we do this, and give up some of our options?" The answer for the Port of Grays Harbor is PREDICTABILITY. We would rather have a 99% chance of success on really important matters, than a 30% chance of success on anything we might want to try. But, as I mentioned before, to any port that wants to become involved in this type of planning activity, have a clear idea about your long-range goals and objectives. Don't go in at the bottom line. Have a clear sense of your priorities. And remember, if you appear reasonable, others will be expected to follow suit.

The State of Washington Department of Ecology developed a Shorelines Management Plan which was the first to receive approval by the Office of Coastal Zone Management. This was of specific assistance to our planning efforts as a C.Z.M. grant, through our State Department of Ecology, funded our planning effort. The O.C.Z.M. is monitoring and expressing a keen interest in the Grays Harbor effort.

The Grays Harbor Estuary Planning project is generating quite a bit of interest in both the State of Washington and at national levels. It has been described by some as a precedent-setting project. A pattern, if you will, that can be used in most any situation. Heads of federal agencies have become aware that this type of COOPERATIVE PLANNING can provide a possible way to expeditiously process estuary related permit applications, thereby eliminating political pressures and potential litigation.

Long-term benefit, which goes beyond the plan itself, is the improved communication between the Port and the regulatory agencies. Because of the planning effort, these agencies have developed a better awareness of the problems facing the Port. In many ways we have stepped out of the regulated/regulator roles into a more cooperative frame where we function to solve mutual problems.

In summary, if you're FRUSTRATED with the situation where everyone seems to act independently and comes into a given situation with their own evaluative criteria; if you're prepared to sit down and COOPERATIVELY develop a long-range management plan for a river, an estuary, or one of the Great Lakes; if you're prepared to COMPROMISE with other managers of resources such as fish, game, birds or water quality; then you -- like the Port of Grays Harbor -- might profit by getting involved in a management planning process out of which can come PREDICTABILITY.

PREDICTABILITY which can be a definite plus when dealing with new port clients, legislators or government agencies who regulate port activities.

Thank you - - -

HENRY E. SOIKE

* **15 GOVERNMENTAL ENTITIES**

Grays Harbor County

- Port of Grays Harbor
- Grays Harbor County
- Cities of:
  - Aberdeen
  - Hoquiam
  - Cosmopolis
  - Westport
  - Ocean Shores

Washington State Departments of -

- Ecology
- Fisheries
- Game
- Natural Resources

Federal

- National Marine Fisheries Service (Department of Commerce)
- Fish & Wildlife Service (Department of Interior)
- Corps of Engineers (Department of Army)
- Environmental Protection Agency

STATEMENT OF GORDON E. DAVIS, AICP
VICE PRESIDENT, WILSEY & HAM (Portland, Oregon)

CONSULTANT TO
THE GRAYS HARBOR ESTUARY PLANNING TASK FORCE

Before the
HOUSE SUBCOMMITTEE ON OCEANOGRAPHY
of the
HOUSE MERCHANT MARINE FISHERIES COMMITTEE
on
RENEWAL OF THE COASTAL ZONE MANAGEMENT ACT OF 1972

HEARING: SEATTLE, WA
JANUARY 9, 1980

My name is Gordon Davis. I am a Vice President and a professional planner with Wilsey & Ham, a planning and engineering consulting firm in Portland, Oregon. Since 1976, I have served as a consultant to the Grays Harbor Estuary Planning Task Force in the preparation of the Grays Harbor Estuary Management Plan.

You have asked me to testify at this hearing about the Grays Harbor Plan and process. To be brief about almost four years of work may be somewhat difficult. However, for the purposes of your hearing it is only truly necessary to talk about those features of the plan and process that may have broader application in a renewed national coastal management act.

In my testimony today, I will not dwell on the Grays Harbor Plan in terms of its content, the agreements reached or even the specific techniques used. We are not here to judge the Grays Harbor Plan, but to try to understand the process by which the plan was developed. But even to do this, you must have some background knowledge.

Background

Grays Harbor is one of two estuaries on the Washington coast and the only one with an authorized navigation channel. The estuary encompasses approximately 100 square miles , half of which is tideflats and intertidal land. The harbor watershed drains approximately 2,500 square miles from four rivers in the south-central portion of the state's Pacific coastline.

As an industrially developed harbor, the region's economy has focussed around the timber industry for the last 100 years. Presently, three major pulp and paper mills operate in the harbor although at one time as many as 35 mills (albeit of a smaller scale) operated on the harbor. More diversified today, the economy also includes a substantial committment to tourism and commercial/recreational fishing.

In 1976, under the Washington state Coastal Zone Management Program, the Grays Harbor estuary was designated as "an area of special concern," and under the state's Shoreline Management Act, as a "shoreline of statewide significance." The state cited in its management program the need to "maintain a balance between the filling of intertidal areas and the preservation of wetlands."

Under the state's management program, each city and county prepared and received state approval for a Shoreline Master Program for their individual jurisdiction. But those master programs in the Grays Harbor region did not resolve conflicts between local governments, the port and the state and federal resource and regulatory agencies over major development proposals in the harbor. The agencies claimed that the individual plans were done without adequate technical information, that they were too general to provide adequate guidance for permit decisions and were done without their direct involvement. Many people at the local level claimed that the plans were too restrictive and did not provide adequate opportunity for growth. The conflict came to a head over a proposed fill of 45 acres of salt marsh for an off-shore drilling platform fabrication facility. Although eventually approved, it was done so only with agreement by all parties that no further such actions could be taken without a single plan representing agreement by all. The frustrations had become too great; local interests by their inability to predict the outcome of public decisions and to understand the standards or criteria by which the decisions were made; state and federal interests by the intense political pressure to which they were subjected and their inability to assure that their regulations would operate to effectively protect resources and the productivity of the harbor.

By agreeing on their frustrations, they had unknowingly agreed on the goals for the plan--that the plan must have predictability and it must be balanced. Predictability would come if landowners and local officials could be assured that projects would

proceed quickly and smoothly through administrative review and approval, and if agencies could be assured that their regulations would be effective in protecting resources and managing for minimum impact. Balance would be obtained if the plan offered opportunities for the local community to pursue its interest in maintaining and developing a strong economy while at the same time insuring the long term integrity and productivity of the natural resource base.

Ultimately, the test of whether or not a plan achieves these goals rests with the public. Ideally then, the public should make the decisions and create the plan that meets their needs. But you, as Congressmen, know only too well that "the public" is a very difficult thing to find, and particularly so, to ask it to make the decisions that would create a Grays Harbor Estuary Management Plan. Instead, we assign to our elected officials the responsibility to determine the public's interest, to make decisions on how to carry out that interest, and to hire people to administer the procedures we establish.

The Grays Harbor Process

The Grays Harbor process is simply a way to make decisions. As it was used with the Grays Harbor Estuary Planning Task Force, numerous techniques were employed in a step-by-step sequence of workshops to arrive at the specific decisions and agreements that are now the Draft Management Plan. But those techniques are unique to the Grays Harbor circumstnace and, they are my techniques, and as such are certainly not universally acceptable or applicable. I could talk at length about techniques for how to take a group of people who can barely tolerate each other, put them on a Task Force, and get them to agree. Additionally, techniques for getting effective citizen involvement is a subject with no end. To suggest that there might be one correct technique for doing such things and therefore should be encompassed within legislation, is ludicrous.

To understand the Grays Harbor process, you must remember its goals--predictability and balance--and understand four overriding principles:

1. The process is set up so that the decisions are made by those people that have the legal responsibility (on behalf of the public's interest) to make decisions. That responsibility is obtained by the holding of an elected office or by having specific statutory authority to regulate public actions. It is these people who, by virtue of that same authority, can be held accountable to uphold the provisions of the plan.

2. The process is designed to operate by consensus decisionmaking so that decisions reached represent a "best practicable" agreement.

3. The process is designed to make available to the decisionmaking, a strong base of technical information and interpretation.

4. The process is designed to solicit from individuals, organizations, special interest groups, landowners, businesses and non-participating governmental agencies, their knowledge, ideas, and values (priorities).

With the application of these four principles, in an interagency format, with a good manager, and a big bag of techniques, it is possible to make decisions. It is easy to argue whether the techniques to solicit community values, ideas and knowledge were effective; whether the technical information was adequate; whether the consensus decisionmaking process was managed properly; and whether the individuals on the task force effectively represented the public's interest. But those arguements only point out the weakness of the people in the process--not the process.

Conclusions

Grays Harbor was and continues to be a learning experience for everyone involved. Just as the task force members could not have expressed the plan's goals at the time they were able to agree on their frustration, I could not have articulated these four principles except in retrospect. If you can embody these principles into the Coastal Zone Management Act, perhaps within the "special area management" concept, you will have provided much of the tools necessary to deal with high conflict coastal management situations. Reciprocally, I will promise to find more and better techniques to carry out the process, and in fac., am now doing so through the preparation of an Estuary Management Plan for Coos Bay, Oregon. The principles are the same, but the techniques are different.

Thank you for the opportunity to present this testimony.

Respectively Submitted,

Gordon E. Davis, AICP
Vice President

Coastal News

Planning for Predictability in Gray's Harbor: Part II

Editor's Note: In the March, 1979 Bulletin, we published an article by Grant Dehart describing the goals and process of planning for predictability in Gray's Harbor. Some of the principals involved have different views on these planning activities. The articles below were prepared by representatives of two groups that have been actively involved in Gray's Harbor.

The Case for Planning

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A previous article in this journal (March 1979) discussed a planning process now taking place relating to the future management of the Grays Harbor Estuary on the Pacific Coast of Washington State. That article addressed many of the specific issues which confront that process and by so doing illustrates the complexity that arises in such an effort. It is not the intent of this responding article to debate those issues in the limited forum provided here. Such a debate, which involves many issues unique to the Grays Harbor system, would have little practical benefit to the readers. Far more important to the management of coastal areas throughout the nation is a need to accent and clarify the very fundamental reason to undertake this type of planning effort. When the process began, it was assumed that "planning" was a commonly held concept among all the various regulatory agencies and interest groups involved in the management of coastal areas. Our experience has suggested that this may not always be the case. The purpose of this article, then, is to present our case for "planning" an estuary. That purpose must first be accepted before any resolution to the many issues confronting estuarine protection and development can be addressed.

The first concept that must be clarified in such a discussion is what planning is understood to be. For the purposes here it is intended to mean, as an end product, the allocation of space for various uses and activities (including preservation) within an area. Since the desirability of allocating space to a particular use or activity in a given subarea will inherently depend on how the use or activity is undertaken, planning also involved developing policies and conditions relating to particular subareas or particular uses and activities. This concept of planning involves a policy commitment to allow the uses and activities specified in the plan if the appropriate conditions are met (and hence the concept of "predictability" addressed in the earlier article). "Planning" here is not intended to be, as it often is in discussions relating to resource management, a euphemism for regulating.

The Grays Harbor process grew out of a long history of frustration among various state, federal, and local agencies regarding the existing permit system for managing the estuary and its basic deficiencies. The current system of managing estuarine environments usually consists of case by case decision making, utilizing uncoordinated regulations and other management programs by various agencies which exercise authority in matters affecting the resource. Since these regulations and programs are frequently developed independent of each other (especially between various levels of government), this situation creates a strong potential for these public agencies to pursue goals and objectives which may or may not be related to one another and which have high potential for conflict between them. It also creates uncertainty regarding the outcome of any project proposal in the estuary area and continues the lengthy permit processes now needed to resolve issues arising out of inconsistent programs of various agencies. Thus, the lack of a coordinated public policy among the many state, federal, and local agencies causes confusion, and frustrates both people seeking permission for various actions and those who are attempting to regulate those activities for the public good.

One of the major drawbacks of the current system is that its ultimate, or cumulative, impact on the environmental quality or ecological productivity cannot be anticipated. This problem is caused by several factors.

First, the current system is oriented toward a case by case review of individual projects as they come up. Consequently, the ultimate impact will depend on which projects are proposed and when, and how effectively each may be advanced and presented in the regulatory and political processes. Second, the existing policy framework under which the individual projects are judged in each agency tend to be general and subject to a wide range of interpretations. Third, the specific standards or criteria for development may vary from agency to agency depending on their basic sense of purpose. For example, a fishery agency would develop standards directed toward the fishery, a game agency may develop criteria primarily directed toward avian fauna, a city may base its standards on a priority need to remove urban blight, and a port may develop its program on a need to create jobs. These purposes may conflict on any given permit issue in a way which makes the outcome uncertain.

The problem of predicting the ultimate effect of individual permit decisions under current management systems poses a serious and potentially long range adverse environmental problem. An estuary is a complex and potentially fragile system. Any one project by itself, if carefully designed and sited, may be acceptable but many such projects may pose a serious threat to the overall system. Also, an acceptable project in present conditions may become unacceptable due to the way the resource may be impacted by future projects. These problems of how a particular project may relate to future projects and future environmental conditions is often referred to as the cumulative effect. Because the case by case approach cannot anticipate these future problems or conditions, it cannot evaluate cumulative effects of permit decisions.

An additional problem in the existing system is its ability to consider alternatives. While the present system attempts to address concerns regarding the "best" or most suitable alternative for a particular use or activity, it does this very inefficiently. Since the current system responds to specific proposals, it only comes into effect after a proposal is developed, a site selected, ownership questions resolved, and some investments made. These commitments limit the ability to enforce a meaningful alternative analysis. Furthermore, due to potential differences between the various management programs of each reviewing agency and the manner in which the programs are administered, a prospective developer has little guidance as to where his efforts might best be directed. Since the ability to evaluate and influence alternatives is limited, greater environmental damage might occur due to the "best" or "least damaging" site for a particular project not being selected and an "acceptable" but less appropriate or desirable site approved. This problem can become very serious when combined with the cumulative effect of many projects.

While the present system poses these problems for ensuring adequate protection of the natural resources, it also creates potential problems for being able to meet the socioeconomic needs of the affected community.

Just as case by case decision making makes it impossible to evaluate cumulative environmental impacts, case by case decisions also prevent evaluation of the cumulative effects of permit decisions on economic conditions and needs. While one project denial may not be critical to the economy the cumulative effects of permit denials may be very damaging. The present system provides no means by which future needs can be evaluated with the permit under consideration.

The present system is also unlikely to be able to achieve the most optimum balance between environmental and economic needs. Since the case by case review system cannot effectively direct development proposals to the area of least environmental impact, the cumulative effect of individual permit decisions could result in a lower level of economic opportunity for a given level of environmental losses than if it were possible to direct development proposals in advance to the site most capable of accommodating the use. By not optimizing the ratio of economic opportunity to environmental costs, the resulting balance would be lower than that which could be achieved. In other words, the present system has no way of knowing whether it is allocating efficiently whatever level of development the system may be ecologically capable of accepting.

In Grays Harbor the present system led to many long and drawn out permit battles between local development interests and state and federal resource agencies. In these battles both sides were frustrated. Developers were frustrated by not knowing what was expected from agencies charged with managing the system.

Agencies were frustrated by a feeling that issues were being decided on factors which did not adequately address resource needs. Virtually every permit question ended up in the "political trenches," as the local vernacular puts it.

In the middle of one of these bitter controversies in 1975, Senator Henry M. Jackson (Washington) urged the various agencies charged with either regulating or developing the estuary to get together and resolve their differences in a planning process. A process was established under the auspices of the Grays Harbor Regional Planning Commission (an association of local governments similar to a Council of Governments in many states). Since the process was to resolve differences between established management programs, the Planning Commission formed a task force of the various state, federal, and local agencies involved to conduct this program. The process then set out to develop an alternative approach to managing an estuary. This approach would consider, in a long range and comprehensive manner, what is needed to protect the natural productive capacity of the system, and what would be needed for the system to perform its economic functions, along with many other roles the estuary plays. This approach, then, would result in a "plan" which addresses the many competing demands on the estuary in the form of policies and use designations. While it was understood that such a plan could not replace the existing permit authorities, it was expected that it would guide decision making under those authorities in much the same way that city comprehensive plans guide zoning decisions. By addressing long term issues, needs and impacts, this approach could correct the deficiencies in the present system.

Once it is decided to undertake such planning, it is then necessary to identify the overall objective of such planning. The Grays Harbor process addressed this question as one of its earliest policy issues. It was decided that the goal of the task force was to manage the system for multiple use. This rather innocuous sounding goal is one of the most significant decisions in the process, since it recognizes that there is a range of legitimate uses that should be accommodated and balanced, and that management cannot only be directed toward special purposes. It was at this juncture that the process departs from the existing system of each agency developing and administering a management program directed at its own special purpose.

This recognition drastically compounds the problems associated with the planning process. As Richard Babcock observed in "Babcock's Law," "any beneficient public policy if pursued vigorously will inevitably conflict with an equally beneficient public policy."[1] The decision to recognize multiple use in an estuarine system inherently recognizes the existence of more than one legitimate public policy which will be pursued vigorously by various interests, and, hence, by Babcock's Law, conflict. If the Grays Harbor process has demonstrated anything; it is that Babcock is right. Planning for special purposes is relatively easy. One can protect an ecological system with a high degree of certainty (but not complete) by drawing a line around the system and prohibiting any further modification within that area. Similarly, very effective economic development plans can be readily formulated if one is not constrained by limits on estuarine modification. It is when both of these objectives are pursued vigorously that planning becomes difficult.

In the previous article Grant Dehart said, "The challenge for coastal zone management is how to improve the implementation of management policies before programs are dismantled or the permit processes are circumvented by political intervention on a large scale." Only through effective, balanced planning can this challenge be met. Whether such planning will be successful will depend upon whether each agency charged with management or development of coastal areas will be able to overcome a natural ingrained reluctance to balance the narrow purpose of that agency with other public purposes and needs. As long as any agency seeks to retain its unilateral discretion in such matters, continued conflict is inevitable. The Grays Harbor process represents a potential prototype process for such a balance to be achieved. It is time to move the question of balance from political rhetoric to actual public policy.

[1] Richard Babcock "Regulating Land Development: Some Thought on the Role of Government," *Land Use: Tough Choices in Today's World*, Special Publication No. 22, Soil Conservation Society of America, Ankeny, Iowa, 1977, page 35.

TOWARD AN ADVANCE PERMIT GUIDANCE SYSTEM UNDER 404 B(1) GUIDELINES

INTRODUCTION

Present 404 B(1) guidelines result in inefficient, uncoordinated and unpredictable decision making in coastal areas. These problems result from:

1. Land use decisions being made on a case-by-case basis utilizing broad national standards contained in the 404 guidelines, without positive coordination with local and state programs.

2. Lack of coordination with regulations promulgated by other federal and state regulatory agencies, resulting in inconsistent and conflicting standards.

3. Standards developed to apply to the entire nation which are incapable of effectively addressing the complexities of all local situations. Consequently, too much authority and discretion rests with individual permit administrators.

The Grays Harbor area, in cooperation with several state and federal agencies, has experimented with a mechanism to ameliorate these problems. This paper presents the perspective of some of the local officials in that process on how the 404 guidelines can be amended to provide more effective decision making by means of allowing EPA to issue advanced permit guidance to prospective developers and local areas.

This paper is addressed to EPA for their use in reviewing 404 guidelines. It is recognized, however, that a complete discussion of 404 issues would involve the role of the Corps of Engineers.

404 AND LAND USE

It has been suggested that EPA should not become involved in local land use planning processes. Local officials in the Grays Harbor area would concur. However, the current law requires EPA to make land use determinations in its evaluation of 404 permit applications. In order for a fill permit to be granted, EPA must consider three key standards:

1. Whether there is any practicable alternative site for the proposed use of the fill area. (Section 230.10(a))
2. Whether the proposed use is "water dependent", with a more stringent "alternatives" test if it is not. (Section 230.10(a) (3)).
3. Whether the project imposes an unacceptable adverse environmental impact. (Actually a series of standards; Sections 230.10 (b), (c) and (d)).

The first two standards are clearly land use considerations and are often the most important issues in a controversy over a permit. Even the third standard involves land use concerns such as "cumulative" impacts. (Section 230.11 (g)) If EPA is going to make such land use determinations as a condition of its approval for fill permits, then EPA is involved in land use regulation. Also, because of the intrinsic nature of environmental protection, there will always be a significant interrelationship between environmental regulations and land use. The question then is, how should EPA best relate to land use concerns? The present guidelines require EPA to address these concerns by reviewing permit applications on a case-by-case basis. Determination of whether a particular use is appropriate is made by applying the standards cited above. In this context, the influence of local land use programs would only be negative--that is, local regulations would prevent a project from proceeding but would not suffice to allow a project to go forward. A similar situation exists under the Coastal Zone Management program, where by an inconsistent project cannot receive a 404 permit. Such negative coordination is largely academic since local authorities usually have sufficient power to limit such uses anyway. The need to coordinate in a positive sense to ensure that there are appropriate places for development under both 404 and local regulations is absent from the guidelines. This coordination can only be accomplished in advance of permit applications. Consequently, a means of advance coordination of a positive nature with local land use regulation and development should be incorporated into the guidelines.

Since it is not possible to implement the Clean Water Act without considering or impacting land use issues, the 404 guidelines should be amended to allow EPA to provide advanced permit guidance concerning how implementation of section 404 criteria will affect land use. Local involvement in the development of such "advance permit guidance" is essential.

COORDINATION OF ENVIRONMENTAL POLICY

EPA is not the only agency responsible for protecting various aspects of environmental quality. There are at least three other federal agencies and four Washington State agencies as well as local governments who have a statutory mandate to protect environmental quality. Each agency typically develops regulations to carry out that mandate. These independent processes often result in inconsistent and conflicting standards that create "catch-22" situations for developers. Examples in Grays Harbor have included:

1. A water quality agency required a dike to seal off an old woodwaste fill as a condition for development. A fisheries agency would not approve the project since the dike would result in a loss of habitat. It is interesting to note that while this particular project failed to receive approval due to this conflict, the issue was later resolved in the Grays Harbor Estuary Management Plan.
2. Some agencies routinely tried to require marsh building as a "mitigation" measure for development

proposals. This requirement was routinely objected to by other agencies because of the loss of fish habitat area.

These conflicting requirements not only make it difficult to know how to design a project, it also greatly lengthens permit processing time while agencies attempt to resolve their differences. This is clearly not a desirable public policy environment.

This problem of coordination of environmental policy also carries over into the land use concerns, because many of these agencies tends to include land use considerations in their permit review processes. Agencies frequently ask if the use really needs to be at the proposed location and if it is water dependent.

NATIONAL STANDARDS

The present 404 guidelines apply uniformly to the entire nation, and their scope must therefore be extremely broad. There is no procedure which permits the development of standards for a specific area. Consequently, they cannot, with any degree of predictability, offer much help on how to resolve specific development vs. environment conflicts in a local area. They are also unclear on how they can help in sorting out priorities on a particular aspect of a project. They do not, for example, help resolve whether the dike cited above should be required or not. The actual resolution of such problems is left to the discretion of individual permit administrators. To compound problems, key words and concepts such as "water dependency" are not well defined.

RECOMMENDED MEASURES

Three key problems create a costly, unpredictable and cumbersome permit system which begs for reform. The problems are:

1. The inherent relationship between federal environmental law and land use decisions.
2. The inconsistency between the standards of various federal (and state) environmental programs and agencies.
3. The broad, highly discretionary nature of federal 404 guidelines.

The 404 permit system can be substantially improved in a manner which not only reduces expense and delay and provides predictability without sacrificing the basic purposes of the Clean Water Act. Further, it is possible for EPA to examine how its mandate can best be achieved in a given geographic area. If the agency does this along with other federal agencies, inconsistencies can be avoided and potential conflicts resolved. This can then be further coordinated with local and state government to permit the integration of federal environmental protection mandates with local needs as expressed in local governmental land use processes. This process of coordinating and localizing each agency's policy could be initiated by any particular agency or local government. There is nothing in any statute which prevents this from occurring, and indeed, several statutes seem to at least encourage, if not

require, that a process of this nature be used to provide balanced and orderly programs of conservation and development. For example, NEPA, the Intergovernmental Cooperation Act, and the Coastal Zone Management Act all stress intergovernmental processes to balance conservation and development needs.

It has been suggested however, that the 404 guidelines preclude EPA from participating in this type of process and from offering what might be called "advanced permit guidance." If this is true, this problem can be eliminated by incorporating the concept into the 404 guidelines. Changes to the 404 guidelines should address the basic problems of regulatory complexity which leads to unpredictability, and a costly and lengthy process. Foremost, the guidelines should encourage the identification and resolution of basic questions in a given area rather than discouraging such efforts.

Three basic changes are needed:

1. The guidelines should make it possible to develop and use separate policies for different areas. In other words, make it possible to tailor decision-making to fit actual situations. This will permit the refinement of the now very broad and abstract national standards to better fit specific situations, thereby making permit administration more realistic and predictable. By being more specific it will also reduce the wide discretion that permit administrators now have in interpreting broad "guidelines."
2. The guidelines should make it possible to identify and resolve, in advance of actual permit applications, potential inconsistencies between various regulatory programs. Waiting for such problems to arise in permit applications is one of the major contributors to permit delays.
3. The guidelines should make it possible to address land use considerations by means of local planning processes; conducted either under general planning authority or coastal zone management programs.

In the interest of efficiency, these three issues should be addressed through one process. This not only would be the most efficient, it would also provide coordination and the ability to more adequately balance competing concerns that are expressed in the guidelines, local land use programs, and the regulations of other agencies.

It is acknowledged that the implementation of this concept will not resolve all issues related to a permit application, since certain site specific questions will not be known in advance. However it will allow land use and major environmental concerns (also referred to as macro issues) to be resolved before actual permit applications are filed for specific projects. Attention then can be focussed in the permit process for a specific project on the design of the

project and the site specific environmental standards that would apply to how the project is constructed.

What this type of program is called is not as important as what it does. In the Grays Harbor instance it has been referred to as Special Area Management Planning. In the future it might be more appropriately called "advance permit guidance." This type of terminology probably more accurately portrays what is sought and avoids troublesome confusion with traditional land use planning. In any event, the purpose of the program is to provide reliable information to guide future permitting processes. While this is potentially most beneficial to prospective development interests, it should also assist agencies in more effectively and efficiently meeting their mandates.

In order to make the process work as efficiently as possible, the 404 guidelines should allow such advance permit guidance to be initiated by any agency. Local government (and the state) should be provided with the opportunity to develop proposed policies, guidelines, or plans which then could be reviewed by EPA to determine whether they would carry out the purposes of the Clean Water Act. If EPA finds that they do, they can then be endorsed, along with any appropriate reservations, qualifications, or conditions concerning either micro or macro level issues. By this means EPA staff does not necessarily have to be involved in the process, except in a technical advisory capacity.

Due to both practical and political constraints this type of process may not be applicable to all areas, and federal staffing limitations may limit its wide application. Consequently, the 404 guidelines will still need to address situations where such advance permit guidance systems are not in effect. However, the potential for this type of system to reduce the costs of permit processes and related studies and to provide better predictability to local areas and the private sector, is sufficient to warrant their encouragement in the 404 guidelines.

The following language, if incorporated into the 404 guidelines, will implement the concept.

40 CFR Part 230

Subpart I - Planning to Shorten Permit Processing Time

§ 230.81 Advanced Permit Guidance (new section)

(a) To the extent that the Administrator finds compliance with the intent of Part 230 being satisfied through a process other than review of individual permit applications, the Administrator may utilize such findings in lieu of those usually arrived at through case-by-case review. In such instances, the Administrator may issue "advanced permit guidance", indicating which findings have been accepted and the terms and conditions of such acceptance. Such advance permit guidance may be based upon the programs and plans of other departments and agencies of federal, state or local governments including, but not limited to, those programs authorized under the Coastal Zone Management Act.

CHAPTER III

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GRAYS HARBOR AS SPECIAL AREA MANAGEMENT PLANNING

As noted in Chapter II, when Congress renewed the Coastal Zone Management Act in 1980, they added sections specially authorizing Special Area Management Planning. Consequently, at the biannual National Conference on Coastal Zone Management, "Coastal Zone 80," held in November of 1980 in Florida, there was a special panel session on Special Area Management Planning. Several of the papers presented at that panel dealt with the Grays Harbor experience. Two of those papers are reproduced here. A third paper by Nan Evans was also presented which dealt with many technological issues raised in the Grays Harbor process. This paper resulted in a responding paper from Pat Dugan which disagreed substantially from the Evans paper. Since the scope of this debate is outside the scope of this report, these papers are not reproduced herein. However, copies of these papers can be obtained from the Grays Harbor Regional Planning Commission.

The first paper in this chapter is written by Charles Walters and Lorraine Bodi. Chuck Walters represented the National Marine Fishery Service throughout the Grays Harbor process and has participated in several similar efforts. He is also a noted exponent among federal agencies of the need for improved collaborative planning programs to enhance the resource management goals of federal agencies. Lorraine Bodi assisted in later stages in providing legal counsel to the federal participants in the process. She was most involved in assisting to modify aspects of the plan to clarify the relationship of the plan to federal regulatory programs. This paper, then, provides a valuable perspective on the process from the

point of view of the staff of a participating federal agency.

The second paper is a more detailed analysis of Special Area Management Planning efforts in two estuaries by Gordon Davis. It provides an especially interesting contrast between two similar programs conducted in two states. It also describes some important techniques to consider when designing such programs. As noted in Chapter II, Gordon Davis is now the prime consulting contractor for the Grays Harbor program.

SPECIAL AREA MANAGEMENT PLANNING - THE BIG GAMBLE

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I. INTRODUCTION: THE STRUGGLE OVER COASTAL AQUATIC RESOURCES

Coastal aquatic ecosystems -- the buffer or transition zone between land and water -- have long been abused by man. Commerce and development have evolved in and along these areas because of sheltered refuge for ships, plentiful natural resources, and easy access to land. When topography has restricted commerce and development, shallow aquatic areas or wetlands have traditionally been filled. As a consequence, the natural and biological values of our coastal aquatic ecosystems have clearly and perhaps permanently declined. Many of these values are vital and irreplaceable.

In this century, we have seen an emerging struggle between proponents of development, who seek increased modification of intertidal and wetland areas for commerce, and conservation interests, who wish to preserve and perpetuate the natural resources of aquatic ecosystems without further losses. Within the past twenty years this conflict has intensified, with prolonged political and legal battles between these opponents over proposals to modify the remaining coastal aquatic ecosystems. Some estuarine ecosystems such as Coos Bay, Oregon, have suffered an 85% loss of wetlands due to filling and diking.

In the last five years, increased development pressure, such as energy activities (OCS) and boating and recreational facilities (marinas), have escalated the demands on the coastal zone and its natural resources. These kinds of "water dependent" activities and facilities are used to justify projects which modify or destroy remaining wetland areas. Despite their biological, commercial, and recreational importance, continued losses of aquatic resources can be predicted.

II. THE LEGAL SYSTEM: A SETTING FOR CONTROVERSY

Along with the struggle between development and conservation interests in the coastal zone have come numerous regulatory authorities which attempt to control and alleviate this conflict. These authorities reflect the differing overlays of Federal, State, and local jurisdiction and interest. Additionally, these authorities vary in their underlying purposes, in their legal mechanisms, and in their policies of implementation.

The struggle between development and conservation interests has been perceived as a national problem, and so has received the attention of our national legislators. While many Federal laws individually address problems of coastal development and coastal resource protection, the most significant of these are the Coastal Zone Management Act (CZMA), the Clean Water Act (CWA), the Fish and Wildlife Coordination Act (FWCA), and the National Environmental Policy Act (NEPA).

These four laws can be roughly divided into three categories: (1) planning law, addressing coastal concerns on a state-by-state basis; (2) permit systems, addressing coastal concerns on a case-by-case basis; and (3) review procedures, allowing agency and public scrutiny of both plans and permits. Each category of law has a related role in the protection and development of the coastal zone, but each is distinct from, and can conflict with, the other.

A. Planning Law: The Coastal Zone Management Act.

The CZMA is primarily a planning law, providing incentives for states to develop management programs to regulate growth and development in the coastal zone. The CZMA recognizes the conflict between coastal development and the protection of the coastal ecosystem. However, the Act addresses this conflict by finding that planning "is the key to more effective protection and use of the land and water resources of the coastal zone."

The CZMA provides for public participation in coastal planning, and encourages interagency cooperation and coordination. Perhaps most significantly, all Federal actions affecting the coastal zone must be "consistent with an approved coastal zone management plan to the maximum extent practicable." While Federal actions are restricted by the "consistency" provisions of the CZMA, this does not mean that any activity authorized under a plan has guarantees of Federal approval. For example, Federal permit approvals are not waived or automatically granted because of "positive consistency" with a CZMA plan. Instead, the provisions of Federal laws, such as the Clean Water Act, override less stringent provisions of a coastal zone management plan.

Plans developed and approved under the CZMA to date have focused relatively little attention on coastal aquatic resources. Moreover, where coastal plans have addressed aquatic resources, they have generally provided insufficient detail and direction for the resolution of competing development and conservation interests. This situation has encouraged conflict between development authorized under the plans and the environmental protections imposed under Federal permit systems and review procedures.

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B. Permit System: The Clean Water Act.

The CWA establishes two permit programs: one for the discharge of pollutants through point sources (Sec. 402), and the other for the discharge of dredged or fill material (Sec. 404). The Section 404 permit program plays a particularly significant role in the protection of coastal aquatic resources. It is presently administered by the U.S. Army Corps of Engineers (COE) but is subject to the Section 404 guidelines promulgated by the Environmental Protection Agency (EPA). The EPA also has "veto" authority over the issuance of a 404 permit, if the agency finds that the discharge or fill would have an "unacceptable adverse impact."

The Section 404 guidelines establish certain protective criteria for permit issuance (e.g., impact on the aquatic ecosystem, need for and alternatives to the proposed activity, and water dependency). Because these criteria are generally not considered in coastal planning, a Section 404 permit for a proposed activity may be disputed, and perhaps denied, even when authorized by a coastal plan. As noted previously, the standards and procedures of the 404 permit process are controlling if the coastal plan is less stringent (of course, the plan controls if it is more stringent, under the "consistency" provision of the CZMA). The lack of consideration given to 404 permit criteria and procedures in coastal planning has led to confusion and frustration on the part of permit applicants, and disputes between local planning agencies and Federal resource agencies.

C. Review Procedures: The Fish and Wildlife Coordination Act; the National Environmental Policy Act.

Both the CZMA and the CWA encourage the involvement of the public and appropriate government agencies in planning and permitting decisions. The FWCA and NEPA provide additional opportunities for comment on such Federal actions, with particular emphasis on the protection of fish and wildlife and other environmental values. The FWCA is designed to ensure "equal consideration" of fish and wildlife impacts with other project purposes and requires consultation with Federal and State fish and wildlife agencies. NEPA is broader in scope, providing opportunity for both public and agency comment on a variety of issues, including impacts to fish and wildlife and other natural resources.

Information and analyses contributed under these review procedures can serve as the basis for conditioning or denying Federal approval. In some cases, State and Federal resource agencies have recommended denial or conditioning of Section 404 permits under the FWCA and NEPA, based upon adverse impacts to coastal aquatic resources. Where these recommendations have conflicted with approved coastal plans, political and legal controversies have ensued.

III. SPECIAL AREA MANAGEMENT PLANNING: A POSSIBLE SOLUTION

Special Area Management Planning ("SAMP") is a new attempt to address the biological and legal conflicts in the coastal zone. At least in theory, SAMP can bridge and alleviate the differences among the three categories of Federal laws, i.e., among planning, permits, and review procedures.

SAMP is, first of all, planning under the authority of the CZMA. However, SAMP is a unique form of planning, because it must involve open and consensus discussions by representatives of agencies and groups which are interested in and may influence future decisions for the geographical areas involved. These representatives are drawn from Federal, State, and local permit and resource agencies and other interest groups, i.e., those most likely to be involved in individual permitting decisions. As far as possible, SAMP must also take into account permit criteria and procedures, recognizing permit system protections and reflecting these protections in planning decisions (e.g., the 404 guidelines). Essentially, SAMP tries to draw potential future struggles between development and conservation interests into the present, and to reconcile these struggles in the present with full recognition of political and legal constraints.

Perhaps most importantly, SAMP can be used as a device to mesh planning and permit decisions. While SAMP cannot eliminate case-by-case permit processes or criteria, it can provide a degree of "predictability" by making advance evaluations based on permit criteria. The degree of "predictability" available through SAMP necessarily depends on the depth of information available for evaluation in the SAMP. If detailed information is subject to SAMP review, compliance of proposed activities with major permit criteria may be determined in advance. At a minimum, SAMP can clarify and identify differences between planning and permitting decisions to avoid confusion and erroneous expectations on the part of development and conservation interests.

EPA's recent revisions to the Section 404 guidelines explain how advance permit evaluations might be reflected in Section 404 decisions through "stratification." By viewing permit decisions as a series of steps or strata, certain of these steps or strata might be evaluated and resolved in a plan, and subsequently adopted by COE in a specific permit decision. In theory, this "stratification" can lead to improved use of SAMP as a decision-making tool, yielding some predictability for permit decisions and/or a shortening of the time required for permit decisions.

The theory of SAMP has not yet been tested in actual practice. However, based on the development of several SAMPs, there are eight guidelines which must be followed if the process, decision-making, and commitments are to be successful.

POINT ONE: A distinct planning area is necessary.

The planning area should include a biologically and geographically defined aquatic ecosystem. The planning area must be of sufficient size to allow balancing of interests and consensus building. Portions of

B. Permit System: The Clean Water Act

The CWA establishes two permit programs: one for the discharge of pollutants through point sources (Sec. 402), and the other for the discharge of dredged or fill material (Sec. 404). The Section 404 permit program plays a particularly significant role in the protection of coastal aquatic resources. It is presently administered by the U.S. Army Corps of Engineers (COE) but is subject to the Section 404 guidelines promulgated by the Environmental Protection Agency (EPA). The EPA also has "veto" authority over the issuance of a 404 permit, if the agency finds that the discharge or fill would have an "unacceptable adverse impact."

The Section 404 guidelines establish certain substantive standards for permit issuance (e.g., impact on the aquatic ecosystem, need for and alternatives to the proposed activity, and water dependency). Because these criteria are generally not tied to coastal planning, a Section 404 permit for a proposed activity may be disapproved, and permits denied, even when authorized by a coastal plan. As noted previously, the standards and procedures of the 404 permit program are controlling if the coastal plan is less stringent (of course, the plan also controls if it is more stringent, under the "consistency" provision of the CZMA). The lack of consideration given in 404 permit criteria and procedures to coastal planning has led to confusion and frustration on the part of permit applicants, and disputes between local planning agencies and federal resource agencies.

C. Review Procedures: The Fish and Wildlife Coordination Act; the National Environmental Policy Act

Both the CZMA and the CWA encourage the involvement of the public and appropriate government agencies in planning and permitting decisions. The FWCA and NEPA provide additional opportunities for comment on such Federal actions, with particular emphasis on the protection of fish and wildlife and other environmental values. The FWCA is designed to ensure "equal consideration" of fish and wildlife with other project purposes and requires consultation with Federal and State fish and wildlife agencies. NEPA is broader in scope, providing opportunity for both public and agency comment on a variety of issues, including impacts to fish and wildlife and other natural resources.

Information and analyses contributed under these review procedures can serve as the basis for conditioning or denying Federal approval. In some cases, State and Federal resource agencies have recommended denial or conditioning of Section 404 permits under the FWCA and NEPA, based upon adverse impacts to coastal aquatic resources. Where these recommendations have conflicted with approved coastal plans, political and legal controversies have ensued.

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SAMP is, first of all, planning under the authority of the CZMA. However, SAMP is a unique form of planning, because it must involve open and consensual discussions by representatives of agencies and groups which are interested in and may influence future decisions for the geographical areas involved. These representatives are drawn from Federal, State, and local permit and resource agencies and other interest groups, i.e., those most likely to be involved in individual permitting decisions. As far as possible, SAMP must also take into account permit criteria and procedures, recognizing permit system protections and reflecting their protections in planning decisions (e.g., the 404 guidelines). Ultimately, SAMP tries to draw potential future struggles between development and conservation interests into the present, and to reconcile these struggles in the present with full recognition of political and legal constraints.

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The theory of SAMP has not yet been tested in actual practice. However, based on the development of several SAMPs, there are eight guidelines which must be followed if the process, decision-making, and consequences are to be successful.

POINT ONE: A distinct planning area is necessary

The planning area should include a biologically and geographically defined aquatic ecosystem. The planning area must be of sufficient size to allow balancing of interests and consensus building. Portions of adjacent shorelands must be included for adequate consideration of alternative use locations, use impact, and water quality impact.

POINT TWO: All agreements must be made by consensus.

A voting or non-consensus decision will likely lead to dispute and lack of support by the aggrieved party. This undermines the basic purpose of SAMP. If parties are unwilling or unable to reach consensus decisions, SAMP will not work.

POINT THREE: There must be full and collaborative involvement of local, State, and Federal agencies and interest groups.

Key groups which are not represented on the decision-making body (usually a task force) may not accept SAMP agreements. While the task force must be kept to a workable size, proper representation, including a balance between development and conservation interests, must be assured. For example, the omission of Federal agencies with permit review authorities would probably be unwise. In this situation, SAMP documentation and criteria may not adequately address Federal agency documentation and criteria for planning and permit decisions, leading to future conflict and possible denial of projects anticipated by the plan.

POINT FOUR: An independent party should guide, coordinate, record, and mediate the SAMP process.

This "independent party" must be neutral and mutually trusted by the SAMP representatives. The role of this party is extremely important, particularly if a SAMP addresses an area of important natural resources as well as conflicting development needs. The party must appreciate and understand aquatic and terrestrial natural resources and their requirements, including cumulative adverse impacts and the role of ecosystem-wide rather than isolated case-by-case decisions. Conversely, he or she must understand industrial, local, State, and Federal development pressures and needs.

For the SAMP process to function effectively, the independent party must be knowledgeable as to local, State, and Federal laws, including permit and review authorities. Thorough understanding of legal limits, permit criteria, and agency procedures is essential.

He or she must also be creative, particularly in suggesting alternative courses of action and middle ground solutions. In some instances, mediation skills, including patience and diplomacy, may be required.

POINT FIVE: Agency and other representatives should have multidisciplinary backgrounds, be able to express and interpret agency or group policy and legal constraints, and have fine-tuned negotiating skills.

The SAMP process is not an easy one and is subject to many pitfalls. Tempers will flare, and discussions will raise challenges and counter-challenges. In this setting, the training and personalities of agency and group representatives play an important part in SAMP decisions. For final agreement to be successful, the representatives must have credibility, mutual trust, and professional respect.

Additionally, each representative must be able to ratify agreements made throughout the process, with full recognition of any legal or policy limitations. If SAMP issues require the development of new policies or interpretations of existing laws and policies, direct agency consultation on matters of policy and law must begin at the early stages of SAMP development and continue throughout the process.

POINT SIX: All decisions must be recorded contemporaneously, with supporting documentation.

Because the SAMP process may be a long and complex one, all agreements of the representatives should be recorded contemporaneously and circulated in written form. This creates a common "record" of decisions made and allows participants to correct mistakes or misunderstandings. It is advisable that a verbatum transcript or tape recording be on file to clarify detailed agreements. Generally, the recording of decisions should be the responsibility of the independent coordinator-mediator.

POINT SEVEN: Local, State, and Federal criteria affecting the planning area must be incorporated and their use documented in the plan.

Each representative must be responsible for ensuring that the legal and policy concerns of the agency or group are considered and documented in the SAMP process. Perhaps most significantly, the representatives should consider the criteria and procedures of the Section 404 permit program. To varying extents, it is possible to reflect these criteria and procedures in the plan, with supporting documentation. In this manner, some of the "guesswork" and potential for future conflict can be alleviated. Since this aspect of SAMP is of significant interest for "streamlining" permit decisions and procedures, it warrants some further discussion.

As noted previously, if SAMP decisions are properly made, they can be used to "stratify" or partially satisfy permit decisions at the time of permit issuance. When planning participants are familiar with the legal and policy criteria for Section 404 permits, and can anticipate projects which will require those permits, some advance evaluation of 404 permit criteria can be conducted by parties such as Federal resource agencies (which normally review and comment on permits). For this

evaluation to occur, the participants must fully understand the permit criteria and must document each level of decision. For example, the participants may review relevant scientific data and evaluate whether a particular activity in a particular area would have an "unacceptable adverse impact" on the aquatic ecosystem within the meaning of the Section 404 guidelines.

As noted previously, advance permit evaluation in a SAMP can result in expedited permit decisions. Nevertheless, it is important to emphasize that they cannot result in guaranteed permit issuance. The expectation of a guaranteed permit under a SAMP cannot be fulfilled under the existing legal system, and probably is not desirable from either a biological or an administrative perspective. To avoid erroneous expectations in this regard, the plan should clearly indicate and document the permit evaluations which have been made, and the remaining steps which must be taken for a permit to be issued.

POINT EIGHT: Implementation procedures should be clearly and explicitly defined for long-term use of a SAMP.

There are three kinds of implementing procedures which control the long-term success of a SAMP. These are (1) an acceptable amendment process; (2) a detailed explanation of how the plan will be used, particularly in local, State, and Federal permit decisions; and (3) clear written commitments from each agency or group.

A SAMP probably will take several years of intensive discussion and negotiations to complete. Although no planning document should be static, a SAMP should not be easily amended if SAMP agreements are to have long-term use. Any amendments to the delicately "balanced" SAMP (i.e., balanced between development and conservation interests) must contrive to reflect a similar balance. To ensure that this is the case, the amendment process should include the same process and representatives involved in the original SAMP. Commitments to the SAMP are sure to cease if representatives are left out of the amendment process, or if the balance of the plan is disrupted.

The "balance" of a SAMP does not mean that all development becomes frozen in time. If an additional development project is sought through plan amendment, and the development would "unbalance" the SAMP, then biological compensation/mitigation can be used in some circumstances to "rebalance" the plan. This approach should only be used in the context of an estuary-wide strategy for restoration/compensation/mitigation, also developed by the task force.

These eight points appear critical to the success of a SAMP based on our current experience. The omission of even one point may jeopardize the balance and outcome of a SAMP. No doubt we will refine or add to these guidelines over time based on progressive experiences. Over time, the process might also be smoothed through the development of standard or model language, guidance documents, etc.

IV. SAMP: THE BIG GAMBLE

SAMP is a difficult and time consuming process and may not be appropriate for all coastal areas, or even for all estuaries. Nevertheless, if the eight points just described are followed, SAMP can result in definite advantages over the current method of coastal planning.

From a biological perspective, SAMP can improve consideration of the aquatic ecosystem in five key areas. First, the process can better evaluate cumulative impacts of projects and permits. Second, the SAMP can provide for long-term protection of aquatic resources, provided that legally enforceable protections are developed and established for the geographic area as part of the SAMP. Third, SAMP can support estuary-wide planning for dredged material disposal and disposal alternatives. Fourth, the process can reflect estuary-wide strategies and plans for mitigation, compensation, or restoration of adverse impacts attributable to development. Finally, SAMP can ensure estuary-wide water quality strategies, which will in turn allow phasing of water quality improvements (e.g., improved fish passage, spawning, aquaculture, recreational and commercial harvest) on a priority basis.

From a legal and political perspective, a SAMP allows divergent interests to discuss and resolve their differences based upon mutual trust, professional respect, and the shared success of a mediated plan. In addition to controlling and alleviating controversy over individual permit matters, the SAMP can provide a focus for ongoing, informal evaluations and discussions between the participants over particular projects and proposals. The openness and communication between development and conservation interests which are required for the development of a SAMP are unquestionably valuable, and should be encouraged to continue.

Nevertheless, the benefits which may be gained from a SAMP must be tempered by some cautions. Because of the "fish bowl" nature of the process, a SAMP which is not properly developed may not reflect a balance between development and conservation interests, and could instead contribute to further losses of coastal aquatic ecosystems.

For example, a SAMP could adversely affect aquatic resources if an agency or group selects the wrong "type" of representative. If the representative does not speak up for agency or group interests, these interests may not be adequately reflected in the SAMP. If the agency or group then binds itself to agreements made in the SAMP, coastal resources could suffer. If a representative is too argumentative and cannot achieve credibility or professional respect, similar results may occur, or consensus may not be possible.

Political interference in the SAMP process can also succeed in "unbalancing" the plan, to the detriment of coastal aquatic resources. All parties to the SAMP must be careful to avoid political solutions to planning disputes and to play by the "rules of the game." A commitment is needed by local congressional and legislative leaders to support the process and maintain its integrity. Otherwise, political decisions made

in a SAMP can be more biologically damaging than many years of case-by-case political decisions.

Finally, a SAMP will be harmful to aquatic resources if the eight points just outlined are not followed. Amendment procedures and standards and conditional use criteria are particular areas of SAMP vulnerability. These areas must be carefully and definitely addressed in the SAMP to avoid resource-damaging "loopholes."

V. CONCLUSION

The SAMP process is certainly a big gamble. SAMP can help to bridge the differences between planning, permits, and review procedures, with corresponding benefits to coastal aquatic ecosystems. Unless properly conducted, as discussed above, SAMP can also backfire, with the opposite results.

The stakes are high, particularly as they concern the long-term viability of our nation's natural resources. However, if all parties play the game above the table, with genuine interest and commitment, the payoffs may be substantial for both coastal protection and coastal development.

PRINCIPLES & TECHNIQUES FOR SPECIAL AREA MANAGEMENT: THE GRAYS HARBOR & COOS BAY EXPERIENCE

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INTRODUCTION

Special Area Management, as embodied in the Coastal Zone Management Act Amendments of 1980 is a concept for making collaborative planning decisions. The reason that this concept has evolved is a function of characteristics of the "special areas" to which it has been applied, and the failure of more traditional planning in those areas.

Areas that are "ripe" for such an approach are characterized by complex, interdependent and conflicting environmental, economic and political factors. Even more characteristic, however, is the area's history of conflict that has resulted in extreme positions being taken on most issues. In such situations, the traditional approach of developing a plan by combining technical determinants with planning principles and public input will not be adequate to overcome polarized public positions. Even with the strongest form of advocacy planning by staff and supporters, obtaining a public consensus in these high conflict circumstances is unlikely.

Special Area Management Planning, as a process of building public consensus through issue identification and resolution with techniques of mediation, negotiation and systematic planning, has evolved as much from on-the-ground experience as theoretical ponderings. The need to solve real problems immediately is often the impetus for this new approach. Such is the case with Grays Harbor, Washington and Coos Bay, Oregon.

The Grays Harbor program represents a conceptual model for collaborative planning and decision making. It was conceived with a sense of what was necessary to allow local, state and federal officials to reach agreement on issues. However, the Grays Harbor program did not have the benefit of a full understanding of the systematic steps and techniques necessary to make the process successful. Coming three years after the start of the Grays Harbor program, the Coos Bay program had the advantage of the Grays Harbor experience and, therefore, represents an operational model for collaborative planning and decision making.

This paper will first describe the physical and political context of these two estuaries in the Pacific Northwest. After briefly outlining the planning process and product of each program, the characteristics of the decision making group will be discussed along with the general sequence for preparing for and making decisions. Finally, in three separate sections, specific techniques will be discussed for the use of technical information, citizen involvement and conflict resolution. Throughout the paper, observations about successes and failures in Grays Harbor and Coos Bay will be discussed along with a comparison of the two programs.

GRAYS HARBOR AND THE WASHINGTON COASTAL PROGRAM

Grays Harbor is one of two major estuaries on the coast of Washington State and the only one with an authorized deep-draft navigation channel (35 feet). The estuary encompasses approximately 100 square miles, half of which are tideflats and intertidal land. The harbor watershed drains approximately 2,500 square miles from four rivers in the south-central portion of the state's Pacific coastline.

Biologically, the harbor supports over 50 species of fish and shellfish and 325 species of water, shore, terrestrial and seasonal birds. The estimated 33,000 acres of intertidal lands support extensive eelgrass and saltmarsh communities. In a thirty-five year period from 1940, approximately 3,800 acres of intertidal lands were used for dredged material disposal and are now uplands. Maintenance dredging also occurred on a continuous basis in the preceding thirty-five years although records are incomplete as to the loss of intertidal lands during that time.

Grays Harbor is an industrially developed port which has been centered on the timber industry for the last 100 years. Presently, three major pulp and paper mills operate in the harbor although at one time, as many as 35 mills (of a smaller scale) were located on the harbor. Since the 1960's, almost 400 million board feet of softwoods have been shipped through Grays Harbor annually. Approximately 34,000 people live in the communities of Hoquiam, Aberdeen, Cosmopolis, Westport and Ocean Shores, that surround the harbor. Over three-quarters of the work force are employed in the forest products industry.

Other substantial and growing sectors of the harbor's economy are commercial and sport fishing as well as tourism. Almost one quarter of the state's total annual charter trips originate from Grays Harbor, and Ocean Shores attracts as many as 50,000 visitors on holiday weekends to its long expanse of beaches.

In 1976, under the Washington State Coastal Zone Management Program, the Grays Harbor estuary was designated as "an area of special concern," and under the state's Shoreline Management Act, as a "shoreline of statewide significance." The state cited in its management program the need to "maintain a balance between the filling of intertidal areas and the preservation of wetlands."

Under the Washington management program, each city and county prepared and received state approval for a Shoreline Master Program. The county and city master programs prepared in Grays Harbor were the first approved under the state-wide program, however, they did not resolve

conflicts between local governments, the port, and the state and federal resource and regulatory agencies over major development proposals in the harbor. The agencies claimed that the individual plans were done without adequate technical information, that they were too general to provide adequate guidance for permit decisions and that they were done without the agencies direct involvement. Many people at the local level claimed that the plans were too restrictive and did not provide adequate opportunity for growth. The conflict came to a head over a proposal to fill 45 acres of salt marsh for an off-shore drilling platform fabrication facility. Although this proposal was eventually approved, it was contingent on agreement by all parties that no further permit actions could be taken without the completion of a single plan representing agreement by all.

In 1976, an Estuary Planning Task Force was formed by the Grays Harbor Regional Planning Commission (an association of local governments similar to Councils of Government in many states). The Task Force, composed of representatives of each of the local jurisdictions, the port and the key state and federal resource and regulatory agencies, with the help of a consultant, began a four-year, five step process to develop an estuary management plan. The nucleus of the planning process was a series of six, two and three day workshops held over a sixteen-month period. Through a mediation process, the consultant led the Task Force through a systematic effort to:

1) Define an estuary-wide management goal
2) Describe the characteristics and establish guidelines for managing resources and development within eight sub-areas in the estuary, and
3) Define management objectives, allowable uses and activities, and special conditions within 44 specific management units that encompass the entire estuary.

Many issues were cause for debate, however, one issue, a proposal to fill 500 acres of intertidal lands, took two days of negotiating and four additional days of work to revise and refine the final agreements. The initial agreements were reached in the summer of 1977 and a draft plan was published in early 1978. Then began a lengthy review and revision process that will result in a revised public draft in late 1980.

COOS BAY AND THE OREGON COASTAL PROGRAM

There are 22 estuaries on the Oregon coast. Of these, only three are authorized and developed for deep-draft navigation. Coos Bay, the largest estuary on the Oregon coast (excluding Columbia River), has a 35 foot channel and encompasses 13,300 acres. It drains a watershed of approximately 650 square miles with one major river and 30 tributary streams.

Coos Bay is divided into three distinct characteristic areas. Lower Bay, from the jetties to river mile 9 is relatively narrow, ranging in width from approximately 2,000 feet to slightly over a mile. Its hydrology is dynamic and contains fringe area tideflats and intertidal lands. Scattered saltmarsh and eelgrass beds exist throughout this area. Upper Bay, the current and historic center of the developed portions of the bay is relatively wide, ranging up to 2 miles wide in some areas. The majority of the Bay's 6,200 acres of tidelands are in this area. The third portion of the bay is a series of eight sloughs, four of which are river-like in their configuration. The upper portion of South Slough, encompassing an aquatic and watershed area of 4,400 acres, was designated as a National Estuarine Sanctuary in 1977, by the Oregon Legislature.

Like Grays Harbor, Coos Bay is a resting, feeding and wintering ground for migratory birds on the Pacific Flyway. Over 250 species of birds are present at various times during the year. Numerous species of fish and shellfish populate the bay with heavy harvesting of clams and oysters in the lower and mid bays.

The northern configuration of Lower Bay is formed by North Spit, a stabilized dune area, approximately 6 miles long by less than a mile wide. This land mass, rich with a diversity of dune and marsh habitat is also the focus for future development pressures in the bay. Its immediate proximity to the navigation channel and short distance to the mouth of the bay, coupled with the need to shift the development focus from Upper to Lower Bay because of the lack of adequate dredged material disposal sites in Upper Bay, makes the large land expanse of North Spit most attractive for diversifying the area's economy.

Coos Bay is an industrial harbor and like Grays Harbor, is centered on the timber industry. Three major mills along with several smaller operations export in excess of 5,000,000 tons annually of which 70 percent are chips destined for pulp mills in Japan. Oregon, and particularly southern Oregon is approaching the end of its old growth forests resulting in declining timber harvests around Coos Bay. Thus, the community is actively working to diversify its economy.

As a result of the 200 mile limit, Coos Bay anticipates expanding development of the off-shore fishery. Presently, the existing commercial and sport fishery ranks second in size in the state. Half of the commercial fishery is salmon while the sport fishery includes hard and soft shell clams, dungeness crab, shad, striped bass, salmon, steelhead and other popular species. If current Port plans are realized, 200 acres on North Spit will be developed into a major fish processing center, adding substantially to the role of the commercial fishery in the Coos Bay economy.

In 1973, the state legislature established a State-Wide Land Use Planning Program and in 1976 added a coastal component to that program. The principal feature of the program is coordinated comprehensive plans prepared by cities and counties in conformance with prescribed state planning standards called goals. In all, 19 goals direct local governments to deal with issues such as housing, transportation, agricultural

and forest lands, urbanization, natural resources, and numerous other topics. Four goals deal directly with coastal resources and establish standards for planning estuarine waters, coastal shorelands, beaches and dunes, and ocean areas.

The Coos Bay area, through an extensive citizen based planning effort, completed and adopted a comprehensive plan for the bay in 1975. Upon evaluation, however, it was found inadequate to comply with the state guidelines. Also, because it lacked direct state and federal agency involvement and subsequent ratification, those agencies refused to accept it as a guide for evaluating state and federal permits, even though a request was consistent with the local plan.

The 1975 plan was scheduled for revision by mid-1979 along with the rest of the county's Comprehensive Plan. By late 1978, it was clear that a consensus was not forthcoming on how to develop an acceptable estuary plan. Based on the Grays Harbor experience, a consultant was hired to manage a process of preparing an Estuary Management Plan.

An Interagency Task Force of local, state and federal officials began work in July, 1979. By July, 1980, the Task Force had reached its agreements and directed the consultant to prepare a first draft of the plan for revision and ultimate adoption by the end of 1980. In all, the Task Force met in 18 two-day workshops to complete its agreements. These agreements are contained in a complex array of approximately 144 aquatic and shoreland management units.

GRAYS HARBOR - THE CONCEPTUAL MODEL FOR SPECIAL AREA MANAGEMENT

Grays Harbor was conceived as a comprehensive planning process moving systematically from broad estuary-wide issues to site specific decisions on use and activity standards. The means to make these decisions was a Planning Task Force consisting of local, state and federal officials, each with some responsibility for the management of resources or the regulation of activities in the estuary. The process began with the preparation of a comprehensive data base of natural and human factors existing throughout the harbor. Those data, reproduced as a series of maps and supporting technical memoranda, were to be the information base for Task Force members to use in arriving at their specific management decisions.

The decision making and plan format were designed to be relatively simple, beginning with a broad, estuary-wide management goal "to manage the estuary for multiple uses." With this goal established, the entire estuary was broken down into eight sub-areas or planning areas, each representing a common set of natural and man-related factors. As each planning area was described in terms of its predominant character, major committed uses, existing or potential conflicts and assets, guidelines were also established to identify how the planning area's natural resources would be managed as well as the economic role it would assume in the future.

With the planning area guidelines established, an overall picture of the harbor emerged to guide the site specific decisions that would be made at the next management level, the management unit. Forty-four management units were established, most representing segments of the shoreline. Each management unit is described by boundaries perpendicular to the shoreline, a boundary parallel to the shoreline in the uplands, and a boundary in the aquatic area at the line of Ordinary High Water. The remainder of the aquatic area is essentially one management unit although there were several special aquatic units designated.

After establishing the boundaries, each management unit was given a management classification. While there were eight classifications to choose from, in general the Task Force had to decide whether the unit should be considered for urban, rural, conservation or natural uses. The assigned management classification included a standard set of allowable uses. Following establishment of a management classification, the Task Force defined a management objective, assigned allowable activities and established any special implementation conditions that it felt were necessary to carry out the unit's management objectives.

By first establishing a direction at the broadest management level, the planning process narrowed the range of choices for each succeeding more detailed management level. It was presumed that it would be easier to gain agreement on more general management policies first than to try to immediately attack site specific management policies, the level at which most of the standing conflicts existed.

The consultant's role was establishing the general framework for decision-making, supplying much of the technical information, and documenting the specific agreements reached. The consultant was to also act as a facilitator to move the Task Force to arrive at consensus decisions. However, because this was the initial effort with the process and the consultant did not have a full understanding of the past conflicts, the process rapidly reached a point of mediating each decision rather than consensus building.

While agreements were ultimately reached and the plan is now in its final stages of completion, the conceptual decision making model that Grays Harbor represented did not work well operationally. A number of factors contributed to the operational problems including: task force members did not understand the role they were being asked to play in this process as a planner/negotiator versus their normal role as regulatory; individuals did not have a clear understanding of the legal and regulatory constraints of other members; technical information was not tailored to the types of decisions that had to be made; agreements reached conceptually by the Task Force were difficult to recall when reviewing specific language documenting that agreement; individuals had different levels of understanding of the issues involved; there was insufficient time for individuals who had developed a general mistrust of each other over years of regulatory conflicts to believe that they could come to an agreement; and leadership roles were not nurtured early enough in the process.

COOS BAY, THE OPERATIONAL MODEL

The Coos Bay Estuary Management Plan represented the opportunity to take the lessons learned from Grays Harbor and build a new approach for preparing special area management plans in high conflict areas. There are numerous differences in the actual content of the Coos Bay plan, some of which are the result of the differences in the two state programs. Others, however, are the result of attempts to correct problems encountered in Grays Harbor with documenting management decisions, boundaries, aquatic versus upland management units, use and activity standards and other items. None of these more technical changes will be discussed in this paper. Rather, this paper will describe the sequences of steps used in Coos Bay to prepare the Task Force for and to better allow them to make decisions. In addition, several key techniques in the Coos Bay process will receive further elaboration.

THE DECISION MAKING MODEL

There are two primary considerations in designing a decision making model such as that used in Coos Bay. First, what is the ability of the group to make decisions, and second, what is the sequential process that the decision makers must go through.

The Decision Making Group

In Coos Bay, the decision making group was an Interagency Task Force made up of representatives of the local, state and federal governments. The local contingent were elected officials from each of three incorporated cities, the county, and the port. In contrast, in Grays Harbor the local representatives were not necessarily elected officials. From the state there were representatives from the fish and wildlife agency, the agency responsible for regulating fill and removal and the agency charged with protecting environmental quality. The federal representatives were the National Marine Fisheries Service, the Fish and Wildlife Service, the EPA and the Corps of Engineers. In addition, two "citizens-at-large" were asked to serve on the Task Force. The state agency responsible for managing the land use and coastal planning program served as an ex-officio member. Each Task Force representative also had an alternate, many of whom attended most or all of the Task Force workshops. Because the management decisions were to be made by consensus, considerable time and effort was required to prepare such a diverse group for decision making. Factors involved in this preparation include:

1. Belief in the Process

Since there may be substantial outside pressures on individuals and the group as a whole to reach agreements, it is necessary that the participants understand and believe that decisions can be made, otherwise they will not be able to make decisions. In general, individuals must believe that they will be able to achieve what they or their constituency would like to see happen. There are many ingredients in achieving this belief, however, being able to actually see the group make a decision even if it is a small one is

2. Knowing the Players

Ultimately for the group to be effective decision makers, they are all going to have to know each other in terms of their:

• Authority -	who they represent, how much direct authority they have, how willing they are to go beyond their specific authority to see issues in full perspective, etc.
• Constituency -	in addition to the actual authority an individual may possess, some members may be viewed as representing, in fact or by inference, some other external interest. Such outside constituencies may substantially effect the individual's perceived authority in the group.
• Style -	everyone has a unique style for dealing with other people; some people come "off-the-wall", others take a hard line to the bitter end, some agree with all positions, some don't say anything until the end, etc.
• Philosophy -	everyone has some basic philosophic position, some are very obvious, others are more obtuse.
• Dependability -	to what degree can one rely on a person to take a certain position in a situation. Inconsistency will ultimately result in exclusion from the mainstream of decision making.
• Coalition Potential -	how willing is the person to develop coalitions to arrive at agreement.
• Knowledge -	as people's areas of knowledge become recognized, the group may tap that information regardless of the philosophic position of the individual.

3. Leadership

While consensus decisions are reached through discussion, the discussion process is most effective when there is a coalescing of positions through a spokesman or leader. The natural tendency of a group is to evolve toward identification of a leader. In a group with differing objectives, more than one will evolve. In addition, depending on the personalities involved, leadership may change from issue to issue. Establishing leaders is essential to effective decision making and may require some nuturing by the facilitator. In the absence of leadership, the facilitator can play that role on a limited basis, however, dependence upon this technique will erode the facilitator's effectiveness and may not lead to as strong of a consensus.

The Decision Making Sequence

There are five major steps to the decision making sequence in a Special Area Management Process such as Grays Harbor or Coos Bay. While there is a general order to these steps, in practice there is a great deal of overlap and recycling between steps.

1. Orientation

The stated purpose of this step is to orient the decision makers to the physical setting they will be dealing with, the entire decision making process and other procedural matters. The unstated or secondary objective is to simply get the group together to begin their preparation for decision making.

Observations: An initial orientation does little more than get the group together. Aside from the knowledge they may already have on the issues, following an orientation session, they will have little recall of the specifics of either the physical setting or the program. It will be necessary to reorient the group many times during the process, particularly when they start dealing with specific issues. An effective technique that accomplishes many objectives is to ask members to informally visit specific areas during lunch breaks or before or after sessions with other members that know the area or the issue. Formal field trips are useful but time consuming, and offer less opportunity for one-on-one exchanges.

2. Issue Identification

Occurring early in the process, this step will allow the group to identify, classify and prioritize issues for resolution. In addition, they will be able to identify the types of information that they will need to deal with the issue and how they want that information brought to them (see section on Technical Information for further elaboration). The unstated objective of this step is to provide an early opportunity for the group to agree on something, even if it is only on what they disagree about. In addition, it is an opportunity to get all the issues out on the table so everyone gets a sense of what is coming.

Observations: This may be more difficult than it sounds. Each member knows there are issues, but they are often unclear about the real issue. In addition, there is a reluctance to suggest some issues for fear of "laying your cards on the table." In Coos Bay, no one suggested that development of the North Spit would be an issue, yet at that time the Port was in the middle of a major permit battle for a "T" dock that would allow the development of a major portion of the Spit.

3. Background Information

The knowledge of the decision maker concerning the issues, the setting and the legal and regulatory constraints will be variable and incomplete. This education process will require much repetition and review, particularly when dealing with specific issues.

One of the most important areas of necessary background information is a complete review of the legal and jurisdictional constraints that have bearing on the planning areas.

Observations: Do not assume that state or federal agency representatives know anything about local land use controls. Conversely, do not assume that local officials really understand state and federal regulations and procedures. Even those who should know, rarely do, and often if they do understand the regulations, they do not trust their application. One exposure to the subject of the regulatory process will not be sufficient; many repetitions will be necessary.

The other necessary background information is technical data on the physical, biological and economic setting. This subject will be discussed in a later section in more detail. However, while it may be desirable to develop a comprehensive geographic data base, if that information is not in the format or detail necessary for decision making, it is of little use. Additionally, it is important to remember that if a Special Area Management Program is characterized by a high conflict situation where issues are polarized, technical information will play a less significant role in resolving conflicts between public interests than in a traditional planning process.

4. Decision Making Tools

Prior to embarking on substantive decisions, decision makers must be equipped with a vocabulary of management tools. Management categories, definitions of terms, allowable uses and activities, development standards, are all items that decision makers must agree to and understand.

Observations: The desired level of predictability will be the primary factor that will influence the selection of decision making tools. The tools that are chosen will determine how specific management decisions will be in the plan and what questions will be left to be answered in the permit process. Task Force members will tend to insist on being very specific in making planning decisions and therefore ensure a high level of predictability. However, to do so may require more information than is or can be made available to the planning process. The temptation to deal with project specifics in the planning process is great but will not be possible with tools that are designed to be more universally applicable.

5. Making Decisions

The approach formaking management decisions will be shaped, in part, by the specific format chosen for the plan. However, the concept of beginning with broad level decisions and using them as constraints to shape more detailed, and presumably more conflicting decisions is universally applicable to group decision making. The process can be structured as follows:

Sub-Areas

Breaking the planning area into sub-areas organizes a large complex area into smaller, more understandable pieces. Criteria such as physical boundaries, natural features, ownership, conflicts, political jurisdictions, and existing uses can begin to differentiate the sub-areas within the planning area. Having decision makers agree on the areas, describe their characteristics and establish general guidelines for managing the resources and defining the economic role of the areas, creates a general policy framework for the planning area and at the same time progressively increases the level of difficulty of decision making.

Observations: Of all steps in the process, this has been the least successful. Because this is the Task Force's first substantive decision making experience, they have found it very difficult to lay out even general policy guidelines for the future of an area. They immediately realize the implications of the policy guidelines on more specific decisions that will be made at the management unit level. Without knowing the details of management unit decisions, Task Force members are reluctant to foreclose any options, even at this very general level. The experience in Grays Harbor was generally more successful than in Coos Bay although both had similar problems with completing the sub-area process. The facilitator should be prepared with alternative approaches or techniques at this step.

Management Units

The major objective of the process is to make decisions at the management unit level. At this level, the geographic area may be quite small (in Coos Bay one management unit included less than 1,000 feet of shoreline) and the management decision may be very detailed. At this point, the decision makers should be fully prepared with the knowledge of the issues, the information that bears on the issues, and the decision making techniques necessary to make decisions. The format for the specific management decisions will be determined by the management approach and tools selected. However, again a progressive decision making approach appears to be most effective.

Observations: This is the most time consuming step of the process. In Coos Bay this step took nine workshops over a five month period and a total of 19 full days for the Task Force to reach agreements on 144 aquatic and shoreland management units. Of that time, three days were spent on a specific conflict resolution session (see section on Conflict Resolution for elaboration). No matter how much time has been spent preparing decision makers with knowledge about their management tools, the issues, and background information, they do not begin to fully understand the process until they are required to apply it. Therefore, the general format for dealing with each management unit included: 1) a review of the existing physical, biologic and human uses and conditions, 2) a public comment period (10 to 15 minutes) for non-Task Force members, 3) a review of unit boundaries, 4) establishment of a management classification and management objectives, 5) specification of allowable uses and activities, and 6) identification of any special conditions that the Task Force believed were important to achieve the management objectives.

TECHNICAL INFORMATION

In a traditional planning approach a systematic evaluation of technical data plays a primary role in shaping planning decisions. However, as stated previously, "special areas," necessitating the application of the principles of a Special Area Management Program, are areas where traditional planning has failed because of severe conflicts that have polarized public interests. In many cases, technical determinants will not overcome conflicting interests. In fact, getting agreement on the adequacy and significance of data may be as difficult as reaching agreement on the issues themselves.

Planning decisions in a Special Area Management Program are often compromises. Reaching a consensus decision may be dependent upon a realization by Task Force members that it is acceptable and even advisable to make decisions in conflict with the technical data. For example, accepting a resource loss (rejecting a technical determinant) may be acceptable within a Special Area Management process simply because of the guarantees for resource protection gained elsewhere.

In spite of the need to be able, at times, to reject technical determinants, technical data can play a central role in many Special Area Management decisions. The degree of its effectiveness in assisting the Task Force in decision making is dependent on the data being formated in a manner that directly bears on the decision being made.

In the Coos Bay program, the data system was substantially changed from that used in Grays Harbor. Like Grays Harbor, a "bay-wide" resource inventory was prepared at a relatively large scale (1"=3000', 1"=1500') covering a broad range of resource and human use topics. However, in Coos Bay, the Interagency Task Force reviewed the issues early in the process and, therefore, could also review the information requirements that would be necessary to deal with the issues. For some issues, the Task Force believed that the broad resource inventory would be sufficient. Some issues were so complex or controversial, that the level of detail of the

3. Making Decisions

The approach for making management decisions will be shaped, in part, by the specific format chosen for the plan. However, the concept of beginning with broad issue definitions and moving from an area-wide view to a more specific level, and progressively more specifying decisions is universally applicable to group decision making. The process can be structured as follows:

Policies

Whether the planning area [illegible] a large complex area [illegible] Policies [illegible] general [illegible] "soft, soft-level" [illegible] the [illegible] of the group [illegible] the planning [illegible] level of difficulty of decision making.

[illegible]. Of all steps in the process, this has been the least successful. Because this is the Task Force's first experience in decision making exercises, they have found it very difficult to [illegible] not even general policy guidelines for the [illegible] of an area. They immediately realize the implications of the policy statements on more specific [illegible] that will be made at the management unit level. Without knowing the details of management unit decisions, Task Force members are reluctant to [illegible] any policy, even at this very general level. [illegible] The facilitator should be prepared with alternative approaches or techniques at this step.

Management Units

The major objective of the process is to make decisions at the management unit level. At this level, the geographic area can be quite small. In fact this has been where units [illegible] less than [illegible] feet of shoreline, and the management decisions may be very detailed. At this point, the decision makers should be fairly conversant with the knowledge of the issues, the information that bears on the issues, and the decision making tools that are necessary to make decisions. The format for the specific management decisions will be determined by the management approach and goals selected. However, again a progressive decision making approach appears to be most effective.

Observations. This is the most time consuming step of the process. In Grays Harbor this step took five workshops over a five month period and a total of 11 full days for the Task Force to reach agreements on TAR results and shoreland management units. At that time, three days were spent on a specific conflict resolution session (see section on Conflict Resolution for elaboration). As much time has been spent presenting decision makers with knowledge about their management tools, the issues, and background information, they do not begin to fully understand the process until they are required to apply it. Therefore, the general format for working with each management unit included: 1) a review of the existing physical, biological and human uses and conditions. This may be [illegible] 2) [illegible] 3) [illegible] 4) [illegible] and 5) identification of any special conditions that the Task Force believed were important to achieve the management unit objectives.

TECHNICAL INFORMATION

In a traditional planning approach a systematic evaluation of technical data plays a primary role in shaping planning decisions. However, [illegible] "special areas," necessitating the application of the principles of a Special Area Management Program, are areas where rational planning has failed because of severe conflicts that have undermined the [illegible]. In many cases, technical determinations will not overcome conflicting interests. In fact, getting agreement on the quality and significance of data may be as difficult as reaching agreement on the issues themselves.

Planning decisions in a Special Area Management Program are often compromises. Reaching a consensus decision may be dependent upon a Task Force member's belief that it is acceptable and even desirable to make decisions in conflict with the technical data. For example, [illegible] (reflecting a technical determination) may be acceptable [illegible] a Special Area Management process simply because of the [illegible] protection gained elsewhere.

In spite of the need to be able, at times, to reject technical information, technical data can play a central role in many Special Area Management decisions. The degree of its effectiveness in assisting the Task Force in decision making is dependent on the data being received in a manner that directly bears on the decision being made.

In the Grays Harbor process, the data format was substantially changed from that used in [illegible]. Like [illegible], a "Capability" [illegible] inventory was prepared at a relatively large scale (1"=2000'). This covered a broad range of resource and human use topics. However, in this case the [illegible] Task Force [illegible] the issues early in the process and, therefore, could also review the information requirements that would be necessary to deal with the issues. For some issues, the Task Force believed that the broad resource inventory would be sufficient. Some issues were so complex or controversial, that the level of detail of the information needed had to be substantially increased. Five issues (generally specific areas within the Bay) requiring detailed information were identified and Specific Area Assessments were conducted in each, bringing the level of detail in most cases up to a scale of 1"=400'.

Other issues, while more complex than could be dealt with through the broad resource inventory, did not require a new data collection effort. These issues simply required that knowledgeable people be assembled to deal with the issue through a systematic work program designed to: 1) fully define the issue, 2) describe the alternative courses of action that the Task Force could take to deal with the issue, and 3) describe the implications of choosing one alternative over another. This third form of data collection also served as one of the key elements in "citizen involvement" since the resultant Functional Task Forces were composed of industry representatives, interested citizens, other special interest groups and agency (principally state) technicians.

Perhaps the most consistently useful information to the Task Force was aerial photographs. The state had recently contracted with the Corps of Engineers to fly the coastal zone. Composite color aerials were prepared at a scale of 1"=1000'. These aerials were used throughout the decision making phase and management unit boundaries and other information was placed on them for on-the-ground referencing. In addition, selected enlargements were made to form the base sheets for each of the five Specific Area Assessments. Finally, as specific issues were deferred to Conflict Resolution, additional enlargements were made of the specific areas involved. In the course of discussion on specific issues or management units, it was no uncommon for Task Force members to cluster around an aerial photo to agree on boundaries or other issues.

CITIZEN INVOLVEMENT

Citizen involvement in the planning process is designed to obtain their knowledge, ideas and values (priorities). The Grays Harbor program has been criticized for having insufficient citizen involvement, although numerous techniques were used throughout the process. Perhaps the most severe criticism has been in the inability of citizens to be directly involved with the Task Force in their decision making process. While the Grays Harbor sessions were open and members of the public did attend, direct participation by the public was limited. It should also be pointed out that while there was considerable interest by special interest groups in Grays Harbor, there was very little general public interest expressed through the several processes designed to gain their involvement.

In Coos Bay, the interest of the general community and special interest groups in the planning program was very high. In addition to town halls, community questionnaires, estuary information events, hearings and other typical techniques, several techniques were used to allow direct citizen involvement with the Task Force. First, the Task Force itself included two citizens-at-large appointed by the County Commissioners. While local elected officials theoretically represent the citizen constituency, many are often perceived to have a certain bias. Citizen appointees may also have a bias but their non-elected status provided a balance to the Task Force that was beneficial.

The Functional Task Force process already described in the section on Technical Information used in Coos Bay was a major opportunity for interested citizens to discuss issues and present conclusions directly to the Task Force. The reports from these groups were used extensively by the Task Force in making decisions.

Of particular importance in Coos Bay was allowing public comment at the beginning of the discussion of each management unit. This provided citizens a direct opportunity to tell the Task Force what they felt its decision should be. While it considerably lengthened the time for discussion, it had a significant influence on the decisions that were made.

Finally, the Task Force itself conducted a Town Hall just prior to embarking on the conflict resolution session. In this very spirited meeting, the Task Force was asked to defend many of its decisions and was given opinions on the issues that remained to be resolved. In the Fall of 1980, the Task Force will hold another Town Hall to receive comments on the draft plan before they direct the consultant on the contents of the revised plan.

CONFLICT RESOLUTION

In Grays Harbor, as decisions were incrementally made around the estuary, each issue was carried through to a final agreement. As major issues were confronted, the process moved from a simple consensus discussion into direct negotiation. In doing so, the Task Force began to adopt a negotiating approach for dealing with all issues and as a result, substantially increased the strain of making decisions. Issues became a conflict too quickly and did not allow a more open ended consensus discussion to be fully effective.

In Coos Bay, to ensure that conflict resolution through negotiation would be used only with those issues where there were truly a conflict, it was decided that a specific conflict resolution session would be programmed at the end of the decision making process. Issues that became true conflicts in the course of making incremental decisions around the bay would be deferred to the end of the process. To ensure that only absolute conflicts were deferred rather than every issue on which there was some disagreement, the facilitator made the determination as to when the Task Force had reached such a conflict. In several instances, when Task Force members suggested that an issue be deferred, the facilitator refused to allow it, believing that a consensus could be achieved or was close at hand. Out of the 144 aquatic and shoreland management units, six were deferred to conflict resolution.

To prepare for the conflict resolution session, the deferred management units were categorized by issue of conflict. In this case the issues were moorage (four units) and industrial lands (two units). Special background information was prepared for the Task Force including a review of the existing situation, the decisions the Task Force had made elsewhere in the bay on the issue, and a summary of relevant technical information from the work of the Functional Task Forces, the resource inventory and other available data. During the conflict resolution session, additional technical expertise was brought in to supplement available materials. Over a two day period, conceptual agreements were negotiated; these were then finalized through special sub-committee work and approval of final drafted language.

With the benefit of the perspective of the decisions the Task Force had already made throughout the bay and full confidence in their ability to make decisions as a group, the conflict resolution process was relatively easy in comparison to the very strained sessions in Grays Harbor..

CONCLUSION

The nation's coastal zone contains the most complex array of natural resources, economic values and political and jurisdictional interests of any area in the country. Any planning and decision making process dealing with this area will find difficulty in affecting a balance between such diverse interests. Add to this complexity, a history of conflict and polarized public interests, and the traditional approach to decision making will be ineffective in resolving issues and developing a public consensus. The Special Area Management Program is designed for these areas and circumstances. It is an approach that is not shaped by physical, economic or political determinants, but by the need to reach agreement. The conceptual and operational models developed for Grays Harbor and Coos Bay have established a format on which future Special Area Management Programs can be based. The major task ahead in those programs will be to perfect techniques to make the process more effective in reaching a public consensus.

CHAPTER IV

CHAPTER IV

SPECIAL AREA MANAGEMENT PLANNING IN THE FEDERAL SYSTEM

Grays Harbor is the pioneer of Special Area Management Planning. This program and the attention it received to a great degree led to the incorporation of this concept into the Coastal Zone Improvement Act of 1980. While this amendment to the Coastal Zone Management Act of 1972 provides a significant step in the development of federal policy, there nonetheless remains many related concerns and issues regarding how this planning concept can be successfully integrated with other federal regulatory programs to provide for effective, coordinated, and efficient management of the nation's coastal resources. Clearly the most comprehensive exploration of this question is the pertinent sections of The Federal Coastal Programs Review: A Report to the President by the Office of Coastal Zone Management, published by the National Oceanographic and Atmospheric Administration in January of 1981. While this chapter presents some of the points in that report, much more detailed discussion is provided in the original. Readers interested in a more detailed discussion should obtain a copy of the full report.

Much of this analysis was developed by Grant DeHart and is derived from his long study of the Grays Harbor process. Many of the factual descriptions and quotations in the discussion are from Grays Harbor situations. As such, this report represents, at least in part, a result of the Grays Harbor experience and it points to where federal policy must proceed if there is to be a cohesive management of coastal resources.

THE FEDERAL COASTAL PROGRAMS REVIEW

A REPORT TO THE PRESIDENT

PREPARED BY THE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

UNITED STATES DEPARTMENT OF COMMERCE

JANUARY 1981

II. GENERAL CONCLUSIONS AND RECOMMENDATIONS

As we have increased the protection of valuable coastal resources during the past two decades, our regulatory system has become more complex. Most coastal development proposals are approved without undue problems. In coastal areas where complex natural resource and economic development issues must be balanced within limited geographic boundaries, the system of case-by-case review by multiple agencies often leads to delays, protracted disputes, loss of valuable habitats and considerable uncertainty for applicants, agencies, and interested citizens. Problems arise as a result of inconsistent policies among government agencies, lack of guidance to applicants and others about agency policies that will be applicable to specific permitting decisions, inability to address issues of cumulative impact, excessive costs to applicants and the public, and real and perceived misuses of case-by-case permit review procedures. Problems also arise when development interests fail to consider natural values early in project planning, especially in areas where local plans and zoning ordinances do not require such consideration.

Considerable work is being done at all levels of government on ways to alleviate these problems. Federal and state agencies are employing or investigating consolidated and joint application and review procedures, stratified and general permitting, mandatory consistency requirements, preapplication and permit tracking services, consolidation and delegation of permit authorities, and various time-limiting techniques. Nonetheless, more can be done.

Specific recommendations are set forth in Section VI of this chapter with respect to improvements in the Federal programs that have the most significant impact on a wide range of efforts to manage special areas of the coast. In general, a number of points stand out that apply to many of the programs analyzed. These general conclusions and recommendations are as follows:

A. Federal regulations governing permits for development in shoreline and wetland areas do not include sufficient substantive guidance with respect to key regulatory terms.

As indicated in Section IV, Federal regulations typically contain only very general statements of substantive regulatory policy, leading to a high degree of uncertainty in the permit process and inconsistent guidance to applicants. In special geographic areas of the coastal zone, where competition between resource protection and development tends to be intense, and where numerous Federal, state, and local agencies are involved in permitting decisions, advance substantive guidance is particularly necessary.

There is a critical need for Federal regulations and guidelines to clarify and define standards for the mitigation of adverse impacts of dredging and filling and structures in wetlands and intertidal areas, and for requiring water-dependent or water-related uses of shorelines and land created by the fill of such areas.

Federal resource agencies and the Army Corps of Engineers do not currently have standard approaches or requirements for requesting the mitigation of adverse impacts of development in wetland or intertidal areas. Mitigation policies developed for specific plans or permit conditions vary from one agency to another and from one part of the country to another within an agency. For example, wildlife agencies and the Corps in one region of the country may allow unavoidable wetland losses to be mitigated by limiting the magnitude of the proposed project. The same agencies in another region may require that losses be compensated for by replacing or providing substitute resources or environments. To many applicants, the operative agency practice seems to be, "get whatever you can" based on the latest technical conference paper or the political situation in the area. For example, a Port official commented on his problems in obtaining a clear policy on mitigation from Federal agencies for a dredging proposal;

> "At each meeting, one or more of the agencies demand something additional which they have thought of since the last meeting. They have taken the position that if these conditions are not met, they will revert back to their original objections to the permit. I hope it is apparent from [this example] that there are no bounds to mitigation requests. It seems to be 'all the traffic will bear!"

The Department of the Interior's Fish and Wildlife Service has recently taken steps to clarify agency policy for the mitigation of adverse impacts of Federal and federally permitted developments on fish and wildlife resources.

Agency interpretations of the extent to which proposed activities involving alteration of wetlands must be water-dependent or water-related also vary. For example, the Regulatory Program of the Army Corps of Engineers indicates that, when the District Engineer evaluates whether an alteration is necessary, he or she shall consider:

> "Whether the proposed activity is primarily dependent on being located in or in close proximity to the aquatic environment and whether feasible alternative sites are available. The applicant must provide sufficient information on the need to locate the proposed activity in the wetland and must provide data on the basis of which the availability of feasible alternative sites exists."

EPA's proposed regulations for Section 404(b)(1) of the Clean Water Act have similar provisions. However, neither set of regulations provides further guidance to agency personnel on the meaning of water dependency, and neither agency has nonregulatory guidelines on the subject. As a result, field personnel use their own judgments and attitudes on the issue on a case-by-case basis, and they may, or may not, be consistent in practice.

Recommendations

Federal resource agencies and the Army Corps of Engineers should develop uniform substantive guidance for field personnel with respect to key regulatory terms that affect permitting for development in wetland and shoreline areas. A number of states also have similar requirements that should be taken into account in developing substantive Federal guidance on these matters.

B. Federal regulatory agencies do not have uniform techniques for making key regulatory assessments related to development in shoreline and wetland areas.

Before substantive judgments can be made about matters such as mitigation requirements for a proposed project or water dependency, Federal regulators are commonly required to measure cumulative environmental impacts, assess relative project needs and alternatives, and estimate the effects of wetland or shoreline alterations. The methods and techniques for making these assessments are rarely specified in advance and often developed on a case-bycase basis, thus burdening applicants and agency representatives with the development of such techniques and leaving applicants and others uncertain how proposals are to be evaluated.

For example, one of the criteria used in evaluating every application for an Army Corps of Engineers permit for the alteration of wetlands is the relative extent of the public and private need for the proposed structure or work in the navigable waters of the United States. No permit will be granted to work in wetlands by the Corps unless the proposed alteration is necessary to realize benefits that outweigh the associated damages to the wetlands. These concepts of need and effect are also considered by the other Federal agencies that review Corps permit applications under the Fish and Wildife Coordination Act and other laws. Neither the Corps nor the Fish and Wildlife Service has written guidance for field personnel on techniques for assessment of need. It is addressed on an ad hoc basis in each individual case rather than in a systematic fashion.

Recommendations

A set of standard methods and techniques would be useful for making assessments in special coastal areas. The Council on Environmental Quality and the Enviromental Protection Agency, in cooperation with the Corps of Engineers, should jointly develop and publish guidelines for assessment methods and techniques involving dredge and fill or other shoreline alteration decisions, pursuant to their roles in administering the National Enviromental Policy Act and the Clean Water Act. These guidelines should be developed in close coordination with the Water Resources Council and other interested state and Federal agencies, and should be sufficiently flexible to allow for differences between regions and state practices.

C. Federal regulations do not provide sufficient authority and support for special area management planning.

In the 1980 amendments to the Coastal Zone Management Act, Congress adopted a new policy to encourage special area management plans. The term "special area management plan" is defined as: "a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone." Such plans are designed to be an integral part of comprehensive state coastal zone management programs. Typically they provide a detailed expression of the state's coastal policies and use standards for specific portions of the coastal area, such as an estuary, bay or port district.

As discussed in Section V, special area management planning can potentially lead to long-term improvements in the predictability and consistency of state and Federal permitting, provide long-term protection for specific resource areas, help avoid or resolve conflicts over specific permits, and provide substantial savings in time and money for applicants, interest groups and the public. Some modifications to Federal regulations are necessary if the process is to be used more widely. These changes should not modify the substance of existing environmental programs, only the procedures for implementing these requirements. Agency officials can implement more effectively the substantive requirements of existing Federal laws if they are authorized to use plans as a part of their regulatory process.

Full utilization of the special area planning technique will depend on whether Federal agencies are legally authorized to make binding policy commitments to such plans for use in subsequent review of permit applications. If agencies are prevented from making such commitments, the influence of such plans is likely to last only as long as participating representatives maintain their "informal" coordination and cooperation. As indicated in the discussion of the Grays Harbor Estuary Plan, while Federal agency representatives that participated in the planning process may be willing to endorse the Plan and use it as a major influence in their review and decisions on permits, they are not confident that the Plan would have any formal or legally binding influence over their actions. They cannot assure that the Plan could be used in a court test as an expression of agency policy in the area, or that a new agency administrator would not reject the commitments of previous agency representatives.

In addition, full utilization of the special area planning technique requires agency commitment to the concept of tiered or stratified regulation. Although CEQ regulations encourage Federal agencies to tier their environmental impact statements to avoid repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review, the concept has been applied primarily in the context of project-related actions such as highways, rights-of-way, and major construction projects. Currently Federal agencies do not generally initiate environmental impact assessments or statements until specific project applications are submitted for review. The current regulatory system of these Federal agencies is unclear as to how or whether proposed area management plans accompanied by programmatic environmental impact statements can be approved and used as a basis for making limited regulatory findings for all prospective activities. As indicated in the Grays Harbor case study, discussed in Section V-B, the Office of Coastal Zone Management has addressed this problem by serving as lead agency for the programmatic environmental impact statement.

Finally, special area management planning processes can also require substantial amounts of professional staff time and funds for data collection, environmental analysis, planning, citizen participation, environmental assessment and associated activities. Some funds are available to state and local agencies for such expenses through Section 306 (program administration) and Section 315 (estuarine sanctuaries) of the Coastal Zone Management Act. However, significant additional assistance would become available if the agencies responsible for a variety of other Federal planning programs were to establish special area management planning as an eligible cost for planning assistance by appropriate recognition in agency regulations and guidelines.

Recommendations

Regulations should be changed for a number of programs that play key roles in the management of special coastal areas to enable agency representatives to develop and endorse formally or otherwise approve special area management plans for use in subsequent permit reviews. Those agencies should establish guidelines and conditions, upon which such development, endorsement and approval will take place; the forms of necessary agreements; and determine the effect of such approved plans on agency permit review comments and decisions. In addition, agency regulations and guidelines should be revised to ensure that special area management planning costs are eligible for planning assistance.

D. Federal agencies lack an appropriate forum for resolution of problems impeding collaborative planning efforts.

Experience to date with the application of special area management concepts by Federal agencies indicates that an interagency committee at the agency headquarters level would be useful in dealing with the opportunities and constraints identified by this review. No such forum currently exists for dealing with the problem of agency collaboration in special area management efforts. Such a committee could undertake the following activities:

- Develop an interagency consensus on key national policies, standards and definitions involved in the interpretation of Federal coastal regulations (e.g., mitigation and water-dependency).

- Develop standardized guidelines for the assessment of environmental impacts and the public interest involved in interpretation of Federal permit regulations (e.g., cumulative impacts, need, alternatives).

- Oversee the revisions to Federal regulations necessary to provide explicit authority for development and legally binding use of the special area management planning process, and develop nonregulatory guidelines and approaches for enforcing the results of such processes.

- Initiate and oversee a study of Federal financial assistance programs that could be used to fund the development of special area management plans and to implement the nonregulatory aspects of those plans.

- Exchange technical information on the development and implementation of special area management plans and provide technical assistance to Federal field personnel and state and local governments in utilizing the special area management planning process.

Recommendations

An interagency committee should be established to assist efforts to coordinate and simplify Federal regulations in special coastal areas. This committee should be chaired by a representative of the Council on Environmental Quality, and include voting representatives from the Environmental Protection Agency, the Fish and Wildlife Service, the Army Corps of Engineers, the National Marine Fisheries Service, the Office of Coastal Zone Management and the Water Resources Council.

Because of their potential interest in special area management planning (but less direct involvement in such plans on a routine basis) the following agencies should be involved on an informal basis in committee deliberations: the Department of Housing and Urban Development; the Department of Energy; the Department of Transportation; The Department of the Interior's Bureau of Land Management, Geological Survey, Heritage Conservation and Recreation Service, and National Park Service; the Department of Commerce's Economic Development Administration, Maritime Administration, and National Sea Grant Program; the Advisory Council on Historic Preservation; and the Office of Management and Budget.

The committee should be encouraged to involve other agencies, interest groups, state, regional, and local officials, academic and research institutions, ports and the public in its deliberations, as necessary. One approach might be to offer an open chair at the meetings of this committee to a local or state expert and/or decisionmaker, depending on the matter before the committee, as a means of incorporating such expertise.

III. PROBLEMS OF THE EXISTING REGULATORY SYSTEM

This section of the chapter discusses the evolution of the Federal and state environmental regulatory process during the last two decades, the typical types of conflicts generated by multi-agency review of development proposals, and the kinds of generic problems created by such review

A. Recent Evolution of the Regulatory Process

An important result of increased environmental awareness and concern during the 1960s was a flurry of legislative activity at both state and national levels, and judicial challenges that changed the way in which some existing laws were administered. Congress passed a number of laws that set standards and procedures for meeting national air and water quality requirements, and gave new authority to Federal agencies to implement them. Other Federal assistance programs were designed to encourage states to develop their own regulatory programs; states were encouraged to pass laws involving state agencies in regulating development in wetlands, beaches, and other sensitive natural areas that had historically been managed by local governments. In addition, laws were passed to assure full consideration of environmental values and fish and wildlife resources in Federal decisionmaking processes. Most of these new state and Federal laws and court decisions expanded the rights of citizens and interest groups to influence and participate in the regulatory process.

While these changes dramatically increased protection for valuable coastal resources, the systems for managing coastal development also became pluralistic, complex and costly. Development that once had been controlled primarily by local government through local planning and zoning permits, or not controlled at all, is now influenced by numerous Federal, state and local agencies, each with their own permits or separate review requirements. Developers and citizens are now faced with, not only the planning and zoning controls of local government, but also numerous single purpose performance standard programs, each requiring several reviews and permits. For example, routine dredging applications in San Francisco Bay typically require the review of five state agencies and four Federal agencies, in addition to the agencies of the local jurisdiction involved. According to local officials, over 700 permits were needed for construction and operation of the SOHIO oil port and transshipment facility in the Port of Long Beach. The company spent nearly $60 million on the development of this project prior to the withdrawal of its applications in 1979.

In spite of this complexity, the large majority of coastal development projects are approved. Many permits are conditioned to meet the requirements of state, local and Federal laws, but these conditions are seldom so onerous that projects cannot be completed. The conditions can involve added costs that must be balanced against public benefits of improved project design. For example, during the 4 years that the

California Coastal Commission approved permits for all coastal development under Proposition 20, 97 percent of more than 25,000 development proposals were approved. During the last 2 1/2 years of administering the Massachusetts Wetlands Protection Act, the state's Division of Wetlands reports that less than 10 percent of wetlands orders by local conservation commissions were appealed. At the national level, the Corps of Engineers reports that in Fiscal Year 1979 less than 1 percent of all permit applications were referred to its Washington headquarters for resolution of conflicts. Of the 16,000 permits or letters of permission processed by the Corps in that year, 72 percent were approved with no problems, and most of the remainder were handled at the district level.

Although these statistics do not reflect the costs incurred by those who withdraw applications prior to completion of the regulatory process due to delay, unacceptable conditions, or general frustration with the uncertainty of the outcome; the proportion of permit applications that raise significant problems of interagency conflict or coordination is very small, in comparison to those that are approved with no conflicts. The small percentage of permit actions that involve denials, appeals or conflict are typically larger projects which have a greater potential for significant impacts on natural resources or economic development. Conflicts over these projects can take large amounts of time and money for environmental analysis, litigation, administrative appeals, dispute resolution and other results of conflict and delay. However, it is recognized that in some cases conflicts between agencies with different mandates serve to identify and protect the overall public interest, and these expenditures are worthwhile.

B. Conflicts Generated by Multi-Agency Review

The pluralistic system of regulatory review that has developed over the last two decades has, however, contributed to protracted disputes in some instances and has led to the need for increased coordination among Federal, state and local agencies. A typical conflict situation may involve a developer, port authority, or public works agency that reaches agreement with one or more local governments on a proposed project, only to have the project denied after lengthy and costly proceedings by a state or Federal agency. In some cases both local and state approvals may be granted, but a Federal permitting agency may deny the project on the basis of its own requirements, other Federal agency comments or those from citizens or interest groups.

Such conflicts can occur within a single level of government. For example, local development projects which are proposed in order to carry out plans supported or approved by one Federal agency may subsequently be denied by another Federal regulatory agency. A state or local government may have invested considerable time and money in preparing a comprehensive land use plan, airport or highway plan, or economic development plan with Federal funding agency assistance and concurrence -- only to have projects needed to implement the plan blocked by a Federal regulatory agency that did not participate in such plans. State or Federal resource agencies may also disagree among themselves on how projects should be developed. Several classic examples of such conflicts were cited by an agency official providing comments for this Review:

> "A water quality agency, in its review of a permit for a shoreline development, required that it be constructed on fill that would seal off leachate from an old woodwaste disposal area. A wildlife agency refused to approve the permit because the fill would remove some wetland and required that the project be constructed on a structure. Either way was acceptable to the developer, but the two agencies did not agree. The proposal, caught in this delay, lost financing and fell through. In other situations, agencies responsible for waterfowl tend to support marsh creation projects while agencies managing fish will resist any modification in aquatic areas. This conflict often frustrates mitigation proposals (since mitigation proposals often benefit one species at the expense of another) and enhancement proposals. Controversies over mitigation or enhancement proposals can be as great as development proposals. This conflict between 'environmental protection' agencies is often very confusing to local officials and is perhaps their greatest frustration in dealing with agencies."

Conflicts such as these can delay or prevent needed economic development or energy projects, lead to loss of valuable coastal resources, or cause excessive costs to both private investors and the public. The Port of Baltimore, for example, maintains that its dredge disposal costs have increased 400 percent over the last 4 years because of delays in obtaining necessary Federal and state permits largely due to intergovernmental conflict and environmental litigation over spoil disposal on two nearby islands. Too often, such conflicts emerge from the process after specific sites have been selected, land acquired, local permits obtained, and large amounts of money invested in engineering drawings, site investigations and environmental analyses.

These kinds of conflicts are often resolved in a way that leads to frustration with government. The uncertainty of the outcome and difficulties of the regulatory process has a chilling effect on some citizens' willingness to engage in it at all. In other cases, developers and local proponents may try to overturn negative Federal agency decisions on a project by political intercession rather than seek a more appropriate location or produce a design that would meet the agencies' requirements. In Grays Harbor, Washington, for example, 39 acres of valuable tidelands were lost when state and Congressional legislators intervened in a conflict between the local Port Authority and state and Federal resource agencies over the filling of land for an oil platform construction facility. Four years later, the filled area remains vacant and unused. In Monterey, California, the famous Cannery Row was excised from the State Coastal Commission's jurisdiction by the state legislature when efforts to resolve conflicts between development and preservation interests broke down. Such political intercession may foreclose opportunities for citizens, interest groups or property owners to influence the outcome of

regulatory decisions, or, at the least, cause them to perceive that they have not had an equitable chance to do so. The perception that narrow special interests are often the beneficiaries of such intercession damages the credibility of the entire regulatory process.

C. Generic Problems

The existing regulatory system is largely reactive. It fails to anticipate potential conflicts and provide mechanisms for avoiding them, or to provide for a clear and unified framework of public policy to guide the balancing of public costs and benefits of individual agency decisions. As a result, the following generic types of problems continue, underlying many of the conflict situations described above:

1. Inconsistent government policies

Inconsistent government policies can lead to unnecessary conflicts when development proposals are reviewed. For example, if local government plans designate wetland areas for housing or other nonwater related uses on zoning maps, property owners and prospective developers may be falsely encouraged to propose development that is likely to be denied, since it may be the policy of a state coastal zone management program or Federal agencies to discourage such uses of wetlands. In Marco Island, Florida, for example, the Deltona Corporation received local zoning and state approvals for the proposed development of thousands of dwellings in wetland areas, only to have its proposals denied by Federal regulatory agencies. The Corporation incurred substantial losses in the lengthy battle over these plans.

Approval of a project proposal at the state or local level without adequate review of Federal requirements often puts additional pressure on Federal regulatory agencies to approve projects, especially those considered to serve the local or state public interest. For example, in states with approved coastal management programs, developers often misinterpret the Federal consistency provisions of the Coastal Zone Management Act as requiring Federal agencies to accommodate local or state desires to allow development that is allowed by the approved state program. The problems created by this lack of understanding of the limits of Federal consistency were described by one Federal agency representative participating in this review as follows:

> "On several occasions I have been present while developers, with local planners at their side, argue that since their development is consistent with the local Shoreline Master Plan, (the National Marine Fisheries Service) and (the Fish and Wildlife Service) must consent to (Corps of Engineers) permits. When they discover (the Coastal Zone Management Act) does not provide an automatic path through the permitting process, there is a sense of betrayal. They believe they had followed the proper procedures, and are surprised to discover that FWS guidelines can prohibit something approved in their local program. Thus, it is frequently impossible for a developer acting in good faith to discuss a project with his local government and thereby get a complete picture of the regulatory hurdles he faces."

2. Uncertainty in the permit process

As a result of the "performance standard" approach to environmental regulation, most Federal permitting programs lack sufficiently specific policies to guide applicants. Federal regulations tend to mandate consideration of broad areas of concern, or require documentation of certain findings, but provide only very general statements of substantive policy that could guide specific planning decisions. Agencies rely only upon case-by-case review of development proposals, based on data collection and analysis of the specific proposed site and the detailed characteristics of the proposal. Even the broad planning considerations involved in projects, such as suitability and need at the proposed location, or consideration of alternative sites, typically are addressed only when an application for a permit is submitted.

Agency regulations typically set forth processes for making decisions that require consideration of alternatives, environmental impacts, or documentation of the need for development proposals. However, they do not provide specific substantive direction to administrators or the public on what documentation is sufficient, or even clear definitions of such matters as water dependency, mitigation requirements, or cumulative impacts. For example, Corps of Engineers' regulatory criteria, to be considered in the review of permits for dredging and spoil disposal, include factors such as "the relative extent of the public and private need for the proposed structure or work" and "the extent and performance of the beneficial and/or detrimental effects which the proposed structure or work may have on the public and private uses to which the area is suited." Because these criteria provide little substantive guidance, the Corps and other Federal agencies must develop more specific guidance tailored to specific projects or areas. For example, an association of property owners, with holdings adjacent to Belvedere Lagoon in California, attempted for more than two years to secure permits for dredging the Lagoon, permits that consultants said were necessary to preserve the Lagoon for fishing, swimming, boating and related recreational activities and to avoid future fish kills, mudflats, algae blooms and stagnation. After this delay, the Corps and EPA developed new technical criteria to determine whether the project would cause significant environmental impacts. Based on new tests using these more specific criteria, the Corps determined that the project complied with the general criteria.

Even in areas where national policies have been developed, they tend to be so general that administrators have almost unlimited discretion to interpret their meaning in the case of each permit application or plan. For example, Corps regulations provide that in determining whether a proposed alteration of wetlands is necessary, consideration must be given to whether or not the proposed activity for which the alteration is to be made is dependent on location in, or in close proximity to the aquatic environment. Because the concept of water dependency is not fully defined, each District

Engineer must interpret the criteria on their own, and this judgment may differ from that of other Corps officials and Federal and state agencies.

In contrast to the general procedural criteria of the Corps' regulations, EPA's revisions to regulations for Section 404(b)(1) of the Clean Water Act include significantly greater guidance with respect to determinations to be made in regional offices regarding discharge of dredged and fill materials in U.S. waters. For each area of concern, such as salinity or mud flats, EPA's proposed guidelines describe environmental characteristics and values, actions that might result in the loss of those values, guidelines for minimizing impacts, and other special considerations. These guidelines recognize that individual judgment must be exercised in each case, and do not prescribe quantified standards or thresholds by which every project or plan is to be judged; they do, however, provide an important measure of substantive guidance to field personnel regarding the standards by which such judgments are to be made. By law these two sets of regulations go together to control the discharge of dredged or fill materials under Section 404 permits issued by the COE.

Although the more general system allows permitting agencies to maintain maximum flexibility to consider all relevant factors and interests before making decisions, the uncertainty inherent in this approach can work against the interest of both applicants and conservation advocates. The risk of investments in development proposals is greatly affected by the predictability and timing of government regulatory decisions. Investors want to know what the policies and requirements are, where these apply geographically, how the agencies will make their decisions, and when they will receive answers. Uncertainty leads to greater costs for applicants in developing their proposals. Conservationists and other citizens also want to know what the agency's policies and requirements for development are, how these will affect valuable resources, and what parts of an area are to be protected from development over the long-term future. Property owners want to know how their neighborhoods are likely to change in the future so that their investments and quality of life are protected.

In addition, the uncertainties of the regulatory system have broader costs. As indicated above, they may lead to political intercession in specific decisions that undermines the public perception of the legitimacy of the governmental process. They also lead to intense frustrations with the process. As one commentor noted, "applicants are not mind readers." This reaction was articulated differently by another reviewer of this study, who claimed that applicants are forced to respond to repeated vague requests for project information or for the redesign of their projects until the personal expectations of the reviewer are met, causing considerable uncertainty, delay and added expense.

Finally, these uncertainties can also lead to inequities in the treatment of similar problems. For example, in a December 1977 study of the Corps of Engineers' regulatory program, the General Accounting Office reported that the Corps' "guidance for evaluating permit applications can be improved," and indicated that the Corps' headquarters should provide better guidelines and criteria to districts for evaluating permits involving wetlands. GAO pointed out that of the five Corps districts it evaluated, each considered wetlands protection an objective of the Clean Water Act, Section 404 Program, but employed different methods to achieve that objective, and had quite different records of approvals and denials for similar actions involving wetlands. The report concluded that, "Differences in the application of wetlands protection measures caused unequal treatment of applicants desiring to perform work in wetlands areas."

3. Failure to address cumulative impacts

The cumulative impacts of multiple permit decisions often cannot be assessed adequately through the review of single applications. The long-term consequences of development in a given area are difficult to control through a case-by-case review of each project application. Protection of the natural functions of an ecosystem requires assessment of long-term cumulative impacts of many projects, not just those for which applications have been submitted. Balancing economic development and environmental concerns often requires that ecosystems be dealt with in their entirety.

For example, at the time a project is proposed, the natural interaction of various parts of an estuary, bay or watershed cannot be adequately considered when permitting agencies deal with only one application. In 1979, the Port of Coos Bay, Oregon, applied to local, state and Federal agencies for two permits -- one for a dock in the Bay's North Spit and another for a trawler basin associated with the dock. Both projects were part of the Port's long-range plan for industrializing an estuarine shoreline. Both also involved alteration of wetlands, a matter of considerable concern to the agencies involved because Coos Bay had lost 85 percent of its wetlands to fill since 1892. As a result of public and agency concerns about the impacts of the proposals, the Port withdrew its application for the trawler basin. This action left the agencies reviewing the application for the dock with an expectation of potential secondary or cumulative impacts of the dock proposal, but with no legal means to address those impacts, given the limitations of the dock application before them. The dock was ultimately approved with no mention of the broader implications of the project in the Corps' permit.

The 1977 GAO report on the Corps of Engineers' permitting program noted that, although the Corps' regulations require consideration of cumulative impacts, neither the regulations nor management directives specifically provide means for identifying and evaluating cumulative effects. This report indicated that an in-house Corps study in 1976 identified the evaluation of cumulative impacts of proposed works as a major district problem, due to the lack of methods or data to perform cumulative impact assessments. The Corps has recently responded to this need by requesting proposals from contractors to study the cumulative impact problem and to develop technical methods for cumulative impact assessment of permit activity.

4. The costs of case-by-case permit review

Case-by-case review of permit applications can involve excessive costs to applicants and the public. In many areas where development involves shoreline alteration, a number of state and Federal agencies review the same project proposals, and are concerned with the same or similar effects of these proposals on natural resources. Typically, the U.S. Fish and Wildlife Service, National Marine Fisheries Service and Environmental Protection Agency, as well as state fishery, wildlife, public lands, and water quality agencies, all review the applications for projects involving the discharge of dredged or fill material or wetland alteration. Each of these agencies may request or collect its own data, conduct a separate environmental analysis, and reach its own decision. In some cases, each of these agencies may collect and analyze data repeatedly for each permit application in the same area. Applicants for development in such areas may be required to submit information that has already been acquired by the agencies from previous applicants. Redundant, uncoordinated, and unpredictable agency data collection, analyses, and review procedures increase public taxes. Those who invest in property and development also bear added costs in the form of interest on borrowing, property taxes or option fees, professional fees and administrative expenses.

For example, before the Baltimore and Norfolk Districts of the Corps of Engineers revised their procedures for reviewing permit applications for dredging and fill in wetlands, the site of almost every proposed project was visited separately by the Fish and Wildlife Service or the National Marine Fisheries Service in these Districts as part of the application review. In the case of a proposed Corps harbor maintenance dredging project to serve a seafood processing plant on Maryland's Eastern Shore, the owner of the plant and the adjacent property where the dredged materials were to be disposed claimed that nearly 200 various government officials visited the site during the 6 years before the project was approved in 1979 (with conditions that minimized its environmental damage). A June 1980 GAO report on processing Corps permits for dredging projects indicated that overlapping roles and duplication of efforts were still contributing to permit delays. In the Corps' Districts it reviewed, both FWS and NMFS were receiving all public notices regarding dredging applications and often performing field reviews on the same project. Encouraging progress has been made by the COE in reducing this problem by development of interagency agreements and joint Federal-state review procedures, described in Section IV-A.

There are often substantial costs to natural resources associated with case-by-case review of completed project applications. Controversy or delay resulting from a wildlife agency objection to a project application, in which substantial investments may have been committed, often leads to political intercession on behalf of the applicant and loss of an environmental resource.

No complete estimate exists of the costs associated with redundancy, delays and conflicts resulting from a regulatory system that relies primarily on case-by-case permit review. However, some of the comments received during this review suggest that the costs are substantial. These include the following:

- A port official noted that "A rule of thumb in the [port] industry is that delay alone [in regulatory proceedings] increases total project costs by 1 percent per month."

- The same official also noted that "There are also substantial environmental costs caused by delay. Millions of gallons of sewage have been dumped [into rivers and bays] during delays in getting agreement between agencies for waste water treatment system improvements."

- A conservation group indicated that "The Corps of Engineers spends $30 to $40 million per year on environmental impact studies, and millions more in litigation over their decisions. Tremendous cost savings could be realized by a new approach to these decisions...."

- A city official noted that "We spent between $130,000 and $150,000 producing a regional plan [to address regulatory conflicts] for the Baltimore Metropolitan Coastal Area. [By comparison,] the environmental assessment for one permit in this area cost $1.2 million. [For another example,] Bethlehem Steel Company claims that delays in obtaining permits cost an additional $500,000 to $1 million on recent construction projects in the area. I do not think you would have trouble attracting funds [for improving the regulatory system] from industry."

5. Misuse of case-by-case permit procedures

It is often alleged that there is a misuse of case-by-case permit procedures by those who wish to impede economic development, or by others who wish to circumvent sound requirements for environmental protection.

Those proposing projects frequently claim that permit review procedures provide too many opportunities for opponents of economic growth or new development to veto projects. They claim that information is withheld during the planning of projects, when it could be used to improve the project design; and then used against the project when the opponents' voices are most effective in the regulatory process, -- such as before administrators or commissions that are most responsive to environmental concerns. Project proponents often claim that since projects typically require several stages of approval through different agencies, they can be stopped by opponents by gaining cumulative concessions from agencies for conditions on projects by finding the "weak link" in the chain of regulatory decisions, by challenging projects in the court when opponents fail to get what they want in administrative procedures, or by so slowing the process with minor objections that the project becomes uneconomic. For example, late in the multi-year battle over Tellico Dam in Tennessee, environmental groups allegedly sought and found an endangered species -- the snail darter -- after failing to stop the project on

other grounds in the administrative proceedings. This led to Congressional intercession in the form of changes to the Endangered Species Act.

On the other side, citizens and environmental groups often claim that some public agencies view the public welfare too narrowly by reviewing projects in a manner that reflects only interests in business, economic development, taxes, or jobs and that environmental concerns are too often ignored. They claim that when legitimate environmental concerns or requirements are used to condition or deny development proposals, applicants often label the "bureaucratic permit process" as an arbitrary abuse of public authority, a taking of private property without compensation, or otherwise try to avoid complying with the law. They frequently allege that some development interests purposely avoid addressing environmental concerns through political intercession on projects or legislative challenges to legal requirements. Many coastal management laws have been challenged repeatedly in state legislatures on the basis of "horror stories" of delay or increased costs caused by regulatory procedures. For example, when Brown and Root withdrew a proposal in 1978 for an OCS platform fabrication facility near Astoria, Oregon, local officials and the press blamed state and Federal environmental permit procedures, particularly state mitigation requirements for wetland alterations. Later information revealed that while the agencies were working toward approval of the facility with conditions to safeguard the environment, the firm withdrew its proposal because the market was not favorable for its products in Alaska lease sale areas and antitrust actions had been commenced against its parent company.

Environmental and other public interest groups point out that proponents of projects are typically well-financed and have adequate legal representation for their private interests, while public groups have only limited (often volunteer) resources to participate in regulatory proceedings. This, they claim, accounts for those few situations when such groups avoid commenting in lower level (sometimes hostile) proceedings, in favor of commenting in later proceedings where they have the most influence. Citizen groups also claim that some developers purposely "wear down the opposition" by scheduling, then canceling, public hearings on proposals or making repeated minor revisions to proposals, and selecting an opportune time for processing applications when the initial controversy has subsided. However, small developers or private landowners often have less resources and expertise to use in this process than such "public" groups, and complain about the undue regulatory burden imposed by what they see as unrealistic zealots.

To some extent these generic types of problems of the existing regulatory systems are found wherever development is managed by government agencies with overlapping legal jurisdictions over the same projects or resources. However, they become intensified in the nation's coastal zone, which contains many limited geographic areas where unique and valuable natural functions that serve fish and wildlife resources compete with economic functions such as port and urban development. Any project involving work in the coastal waters of the United States will automatically be subject to review by at least four Federal agencies, typically under five separate statutes. Many of the most sensitive areas in the coastal zone are enclosed ecosystems such as bays and estuaries, where development impacts are likely to spill over the boundaries of several local jurisdictions. Because the resources at stake are likely to be of more than usual significance, state agencies are also likely to have some control over proposed projects. Finally, these regulatory problems tend to become exaggerated in such areas when repeated conflicts cause normal avenues of communication and cooperation to become closed.

V. COLLABORATIVE INTERGOVERNMENTAL PLANNING FOR SPECIAL AREAS

During the last decade, Federal, state, and local agencies have begun to experiment with another approach to resolve regulatory problems of uncertain, inconsistent, and often conflicting regulatory procedures in limited areas of complex resource and economic issues. This process -- called "special area management planning" -- seeks to improve coordination among regulatory programs by establishing uniform policies and standards to guide development in specific areas in advance of specific applications for projects. It recognizes the shared responsibilities of each level of government, and seeks to bring all relevant agencies to the negotiating table for the purpose of developing a comprehensive land and water use plan for a limited geographic area that provides for natural resource protection and reasonable economic growth. Through a consensus building process among all parties with an effective veto over permits that might be applied for in such an area, this process seeks to anticipate potential intergovernmental conflicts and avoid them, and to provide detailed policies, standards, and criteria for resolving conflicts when they do occur.

This section of the report discusses major features of the special area management process, some areas in which it has been utilized in the past, and the constraints on its further use.

A. Key Features of the Special Area Management Planning Process

The goals of special area management planning include more uniform and consistent government policies among governmental agencies at all levels that control development, increased predictability of government decisions on specific plans and permit applications, balanced and comprehensive consideration of long-term environmental and economic needs, enhanced long-term protection of valuable coastal resources, and expedited review of applications for development permits or conservation proposals. To achieve these goals in an area experiencing regulatory conflicts, the area must be carefully identified, and a process of intergovernmental cooperation must be carefully constructed. The following paragraphs describes the key features of these requirements.

1. Identification of a "Special Area"

An area is "special" when complex resource and economic development issues must be balanced within a limited geographical zone. Normally such areas have a long history of regulatory conflicts due to overlapping responsibilities of a variety of Federal, state and local agencies that affect the outcome of development proposals, so that traditional planning processes have proved to be unsatisfactory. Typically, diverse and competing interest groups exist in such areas, which historically have been unsuccessful in reaching compromises over development or conservation goals for the area. An area may also be "special" because of outstanding resource values which warrant collaborative interagency preservation efforts in advance of specific resource use conflicts.

Estuaries, bays, river headlands and the shoreline and coastal fringe of similar water bodies, in which unique and valuable natural functions that serve fish and wildlife resources compete with economic functions such as port and urban development, often have these complex characteristics. Examples include Grays Harbor, Willapa Bay, the lower Columbia River, Yaquina Bay, Coos Bay, San Francisco Bay, Elkhorn Slough, and San Diego Bay on the Pacific Coast; Galveston Bay, Lake Charles, Lake Ponchartrain, Mobile Bay, Apalachicola River and Bay, and Tampa Bay on the Gulf coast; and Winya Bay, parts of Chesapeake Bay, upper Delaware Bay, Long Island Sound, Narragansett Bay, Buzzards Bay, Boston Harbor, and Casco Bay on the Atlantic Coast.

More limited areas of shoreline may also be suitable for special area management planning. In some cases a major economic use such as a port or an energy facility must compete with numerous water-related urban uses and natural features, and the use may have a zone of impact that regulatory agencies will have to consider. Examples include the Port Angeles, Washington, area proposed as a terminal for a west-to-east crude oil pipeline, port expansion areas in San Francisco Bay (e.g., Benecia, Oakland, and Richmond), and the Ports of Houston, Galveston, Mobile, and New Orleans. In areas where natural hazards, such as hurricanes or floods, have damaged property and the natural environment, collaborative replanning to alleviate human suffering and avoid future losses may benefit from the special area management approach. Examples of such areas include Mobile, Alabama, the lower Columbia River area near Mount St. Helens, and several barrier islands subject to development pressures along the Gulf and Atlantic coasts. Finally, areas where obsolete port facilities are being converted to water related recreational and commercial uses in an urban setting, involving many city, state and Federal public works and permitting agencies, can be planned using the special area management approach. Examples include San Francisco's northeast waterfront, Baltimore's metropolitan coastal area and inner harbor, and the Detroit waterfront.

The geographic area must be determined by the nature of the interagency conflicts that need to be resolved. It must be small enough to permit analysis sufficiently detailed to allow the participants to understand and resolve the major problems and to develop policies in the plan that are specific in their application to individual land areas, uses and potential projects. The area should also be large enough to allow problems to be addressed on an ecosystem basis when possible (recognizing the difficulties of determining where one ecosystem begins and another ends), or to represent a geographic or physiographic unit that is recognized and accepted by the constituencies of the participating agencies.

Finally, the special area management process may be appropriate or desirable only in selected areas where conditions are ripe for its use. According to one reviewer of this report involved in such a process, these conditions usually occur where some external stimulus exists to local government (such as state planning requirements or Federal conditions blocking permits until plans are completed), a broad policy framework (such as state coastal zone management policies) has been imposed to guide plan development, a high level of fatigue or frustration exists with the existing regulatory process by local governments and private development interests, and the affected parties recognize that bargaining and compromise with other opposing interests is necessary to achieve individual goals. Where these or similar conditions are not present, other planning models may be more appropriate and useful in resolving regulatory conflicts.

In some cases, the basic premise for developing a special area management plan may be the special ecological characteristics of an area, such as a biological preserve, estuarine sanctuary, or wilderness area on the coast, rather than conflict resolution. In such areas of special natural value, this type of collaborative forethought to long-term protection may be called for, with no immediate conflict on the horizon. In such cases, collaborative planning processes might be used in combination with the sanctuaries programs administered by the Office of Coastal Zone Management. In general, this report emphasizes the use of collaborative planning processes in conflict situations because most of the early examples of such planning evolved from such experience. In the absence of conflicts, local and state governments may be less likely to invite Federal representatives into direct collaboration for planning long-term protection for pristine natural areas, unless they are seeking additional financial resources or Federal legal controls over development, or unless Federal property is a part of the planning area.

Potential special areas where processes might be initiated can be identified in a number of ways. They may be areas already designated as "geographic areas of particular concern" or "areas for preservation and restoration" in state coastal zone management programs pursuant to the Coastal Zone Management Act. They may be areas suggested for collaborative planning by Federal, state, or local agencies in order to anticipate or resolve major permit disputes, or to address cumulative impacts. They may be areas suggested by environmental groups, where major natural resources are threatened. Or, they may be areas identified by port authorities or other economic interests in response to permitting problems, or to obtain a unified agency and public response to development proposals before major investments are made.

In general, the process works best when such areas are identified and designated from the "ground up" or at the "grass roots" level, where the existing regulatory system creates problems on a routine basis. This concept was widely supported by reviewers of this report, and has been cited in at least one study leading to a locally initiated special area management planning process in Florida:

> "Although resource protection is a function carried out by state and Federal governments, Federal and state management alone will not solve the resource problems of the Apalachicola Basin. 'Grass roots,' local, county problem solving is a thrust of Florida's Local Government Comprehensive Planning Act...."

Such a planning process is likely to be initiated most quickly and result in the most successful outcome where broad multi-level support exists for recognition of a specific area and initiation of the planning process, because of the heavy demands upon agencies and interest groups for participation once the process begins. State or Federal agency efforts to conduct coastwide or regional inventories of potential special areas, or to designate such areas through some systematic planning effort, are not likely to be useful or appropriate in advance of situations that are widely perceived to be problems at the local level.

2. Key Features of the Process

The special area management planning process results in a geographically specific plan with designated uses, policies, standards and conditions for development, and conservation activities in the planning area. In some respects such a plan is similar to familiar master plans, local land use plans, or regional coastal management plans. However, several features of special area management planning, in combination, distinguish it from other planning models, and are keys to its use in achieving improvements in the regulatory system.

a. A Collaborative Intergovernmental Process

Special area management planning is a collaborative process involving voluntary participation by representatives of all key Federal, state, and local agencies that have legal authority (and an effective veto) over development projects in an area, or otherwise have an important role to play with respect to those projects. For example, if the special area includes "navigable waters of the United States," any planning to guide development proposals which might involve dredging, filling, or other works in those waters should involve the Army Corps of Engineers, the Fish and Wildlife Service, EPA, and the National Marine Fisheries Service, as well as state and local agencies which must respond to such proposals. Similarly, if a port authority or urban redevelopment agency has proprietary control over large land and water segments of the special area, or an energy siting agency has authority over the siting of proposed facilities in the area, these agencies must be represented in order for the resulting plan to be implemented effectively. Although some reviewers of this report have suggested that participation by Federal and other key agencies be made mandatory, experience to date indicates that forced participation is not as likely to lead to constructive cooperation and full commitment to implementation as is voluntary participation where the benefits of collaborative planning are perceived by all participants. With demonstrated effectiveness of early prototypes in achieving the goals of this type of planning, voluntary participation is expected to be high.

In some cases, the process may include participation by agencies with no direct land or water management responsibilities; i.e, those that have technical information and expertise that is useful to management agencies. Such participation could be through a technical advisory committee or as an integral part of the planning body.

Care should be taken in the formation of collaborative planning groups to assure that a proper balance of interests is maintained and to prevent some groups from dominating or threatening the interests of others whose support is necessary to implement the plan. In such a process, it should be recognized that coalitions of interests may form before and during the planning process which could encourage the type of political armtwisting and delays that the planning process is designed to prevent.

b. Agreement by Consensus

Special area management plans are arrived at by consensus among the participating governmental agencies. Consensus approval means that no participating agency objects to the provisions of the final plan and that each participating agency is committed to adhere to the plan so long as the conditions under which the plan was developed have not substantially changed. Such consensus assures, for example, that if all agencies agree (after appropriate citizen participation and administrative and environmental procedures) that certain portions of a harbor are suitable for a particular use in light of mitigation or other trade-offs and other alternative uses, those agencies will abide by the consensus on this matter in approving, denying, or conditioning subsequent permits for specific projects in the area. This consensus is articulated in a written form, such as agency memoranda of agreement, that can serve as a comprehensive, concise record of the information on which it was based, planning alternatives considered, means to avoid or minimize environmental harm, programs adopted for mitigation, and decisions of the participating regulatory agencies.

c. Integration of Federal, State, and Local Legal Requirements

To help alleviate the problem of conflicting government policies with respect to development and environmental protection, special area management plans are developed to conform with the variety of local, state, and Federal laws applicable to the area, except where the plan itself is designed to result in changes to those laws (such as existing local plans and zoning ordinances). The plan explicitly describes the laws applicable to development in the area, and the extent to which the plan itself meets the criteria and required findings embodied in those laws.

For example, if a special area includes wetlands classified as "navigable waters of the United States," the plan would explicitly describe how Section 404 of the Clean Water Act will apply to any proposed development or activity in those wetlands. If the parties developing the plan have agreed to allow certain uses in the wetlands, the plan would describe the conditions under which they will be allowed, and those conditions will have been negotiated to be consistent with not only Section 404 but also applicable state and local laws. The plan would also include a number of findings that could form the basis of findings required in subsequent applications for permits in the area -- on issues such as the extent to which the need for such allowed uses had been established, water-dependency, whether the location of the allowed uses represents the only feasible alternate, and the extent to which the adverse impacts of such uses are acceptable in balance with other provisions of the plan such as mitigation or long-term preservation of other wetland areas.

Not all of the criteria and findings to be made in future permitting proceedings can be met by the plan in advance of specific project applications (such as the permissible toxicity of the dredge spoil to be disposed of); in such cases, the plan provides a reference to the legal requirements that must be satisfied at the permit application stage.

d. Use of a Neutral and Independent Mediator.

In most cases, a neutral and independent mediator is used to help the parties achieve a consensus on a special area management plan. The mediator has no authority to impose a settlement. Rather, his or her role is to help the parties define the framework within which they will negotiate, to facilitate the substantive negotiations, and to assist the parties' creation of the means to implement the agreements they reach. In some cases, the mediator is called in only to help the parties resolve a particular dispute after an impasse has been reached. In others, the mediator may not only help the parties achieve broader consensus, but may also serve as a technical planning consultant for designing the planning process, preparing analyses of specific issues and areas, and recommending alternative plans.

e. Meaningful Public Involvement.

Special area management plans are adopted with full involvement, not only of the parties directly affected by the plan, such as property owners in the area, but also those members of the general public with a substantial interest in the resources and economic uses in the area the plan proposes to govern, such as environmental and economic interest groups. Participation of these public interests is necessary if the plan is to be fully implemented, as they have a variety of legal and political means to affect the adoption and implementation of the plan, whether or not they are directly involved in its development. For example, most Federal, state, and local environmental and planning laws will require the involvement of the public in the subsequent regulatory process. If citizens and interest groups are not satisfied with the outcome of a collaborative planning process, opposition to each permit application or proposed project in the planning area is likely to impair the usefulness of the plan. On the other hand, widespread public support for the plan will be likely to discourage development proposals inconsistent with its terms.

f. Specified Mechanisms for Implementation.

Regulatory, nonregulatory and other institutional measures are specified as part of the special area management plan to ensure that it is enforceable, predictable, and consistent with other legal mechanisms for controlling development in the area. Regulatory measures can take such forms as memoranda of agreement by state and Federal agencies, changes to comprehensive plans and zoning ordinances by local governments, adoption as part of state coastal management or land use programs, and one or a combination of the regulatory mechanisms discussed in Section III above. Nonregulatory mechanisms can include land acquisition for public purposes as part of the plan, imposition of restricted use easements, transfers of development rights, land banking or exchanges for mitigation purposes, and land trusts.

The range of other possible institutional mechanisms is broad. In some cases, new intergovernmental organizations or agencies can be established to implement a special area management plan, such as the San Francisco Bay Conservation and Development Commission (discussed as one of the following case examples). In states such as Florida and Minnesota that have laws for the designation and management of "critical environmental areas," patterned after the American Law Institute's Model Land Development Code, special area management plans might be institutionalized through such processes. National status or special designations may be conferred on all or parts of the area to assist plan implementation, such as designation as a National Estuarine Sanctuary under Section 315 of the Coastal Zone Management Act, designation by the Army Corps of Engineers under Section 404(b) of the Clean Water Act as a possible future dredge spoil disposal site, or designation by EPA under Section 404(c) of the Clean Water Act as an area that cannot be specified as a disposal site or in which such disposal will not be permitted.

g. Stratified Regulatory Decisionmaking.

The special area management process encourages agencies to eliminate repetitive consideration of regulatory decisions on broad planning issues that have been resolved by the plan when permit applications for specific projects are reviewed. If, for example, the plan can be used as a basis or partial basis of findings on issues such as acceptable adverse impact, project need, water dependency, suitability of alternatives, allowable uses, and mitigation requirements, the agencies involved can focus attention on the detailed issues specific to the permit action. The concept fits well with the "tiering" provision of the regulations of the President's Council on Environmental Quality with respect to preparation of environmental impact statements, encouraging federal agencies to eliminate repetitive discussions of the same issues and to focus on the issues ripe for decision at each level of environmental review.

Variations of one or more of these general features may be possible and appropriate to achieve the desired results in specific areas. For example, if certain Federal agencies that review development permits rely primarily on counterpart state agencies for implementation of their program objectives, direct participation in the planning process by these Federal agencies may not be necessary. In some situations, agreement by consensus may not be required, such as where a strong lead agency or administrator (e.g., a coastal commission, an energy siting council or a Chief Forester) has sufficient authority to implement a plan, or where small segments of a plan for which consensus cannot be reached can be deferred for resolution during the permit application process. An independent mediator may not be required if a lead agency representative is accepted by participating parties as an objective facilitator of multi-agency agreement on a plan. In some special areas, even the concept of tiered or stratified regulatory decisionmaking may not be essential when acquisition and other nonregulatory forms of management are the primary means for plan implementation.

B. Case Studies

The following cases illustrate conflicts created by the case-by-case regulatory review procedure in areas with complex resource and economic development issues, and attempts to resolve those conflicts through special area management planning, incorporating several of the features described above.

Even though the conceptual basis for special area management planning has only recently emerged from these cases, and experience in multi-agency implementation of such plans is limited, these examples demonstrate that a process embodying the features referred to above can work. They show that all levels of government can work together to resolve problems in governing coastal resources that the case-by-case permitting system is poorly equipped to handle; that direct collaboration among diverse interest groups can result in a proper balance between conservation and development in a given area; that permit decisions can be expedited in a more predictable manner if a plan resolves some of the more general questions raised by ambiguous or conflicting government policy; and that plans resulting from such processes can maintain the natural functions of ecosystem areas, while allowing for needed development.

In the process of striving toward meeting special area management goals, most of those participating in such planning efforts have also found that the high level of interagency communication has improved the long-term working relationships among levels of government and participating interest groups. One Port official described this benefit as follows:

> "A long-term benefit which goes beyond the plan itself is improved communication between the Port and the regulatory agencies. Through the process of debating policies and programs regulatory agencies, state and Federal, developed a better awareness of the problems facing a viable Port. The Port, in turn, has become more keenly aware of the factors limiting the agencies. The end result has been a

markedly improved credibility between the various parties and an establishment of clear lines of communication that will continue well beyond the planning process. This develops a more effective Port program, and provides an early measure of feasibility on projects placing the Port in an adversary role. This is a major departure from the classic regulated and regulator roles and puts the Port and the resource agencies into a more cooperative frame to solve a mutual problem with appreciation for the other's constraints."

1. Grays Harbor, Washington

The Grays Harbor estuary, on the central coast of Washington State, includes 62,000 acres of water, tidal marsh and partially developed shoreline, and the State's largest port outside of Puget Sound. It is one of the few large coastal bays and estuaries remaining on the west coast. The estuary supports more than 50 species of fish, large populations of clams, oysters and crabs, and 325 species of birds (one-third of all bird species found in Washington State). The economies of six towns depend upon shorefront industries such as ports, timber processing, fishing, and recreational boating. A 23-mile navigation channel has required periodic maintenance dredging by the Army Corps of Engineers, which historically has supplied much of the shoreline fill upon which large parts of the communities and these industries have been built.

Since the beginning of the century, the towns of Aberdeen, Houquiam, Cosmopolis, and Montesano have been exporting wood products from facilities located on land created by dredged spoils deposited in marshes. Between 1940 and 1975, maintenance dredging for industrial sites involved alteration of about 3,850 acres of intertidal habitat. After Federal laws were passed giving more direct authority over these actions to Federal agencies and requiring full consideration of fish and wildlife values in their exercise of this authority, conflicts among many agencies arose and gained national attention.

In 1974, the Grays Harbor Regional Planning Commission, together with the local communities around the estuary, prepared a local Shoreline Master Program that was adopted by the State Department of Ecology in 1975 under the State Shoreline Management Act, the heart of its Coastal Zone Management Program. However, even though the local Program involved broad citizen and agency participation, it was unable to resolve major interagency conflicts. Federal resource agencies claimed that the plan was prepared without adequate resource information, provided inadequate guidance for aquatic activities, and was too general. The Port and some local units of government felt that the plan unduly restricted development because, among other things, it designated 2,100 acres of Port-owned tidelands and wetlands as conservancy areas.

Conflicts over development proposals by the Port to fill 39 acres of wetlands for the Kaiser Steel Company to assemble offshore drilling platforms, a proposed waterfront motel and restaurant in the City of Aberdeen, and a proposed Boise-Cascade Corporation sawmill requiring bulkheading, involved local, state and Federal agencies in controversies and permit delays lasting up to 2 years.

Political intercession on behalf of the Port on the Kaiser proposal, and lengthy delays or rejection of other projects, frustrated all parties in the decision process. With the encouragement of Senator Henry Jackson, the Fish and Wildlife Service and National Marine Fisheries Service urged that a more specific plan be prepared that could address the cumulative effects of future development proposals. They indicated that they would recommend rejection of all subsequent development proposals in the estuary until all parties had developed an overall plan for the estuary. The Port of Grays Harbor also urged the development of such a plan, because 2,200 acres of port-owned riparian tidal lands were directly affected. The situation was ripe for more effective collaborative planning involving all parties to these disputes.

As a part of its Coastal Zone Management Program approved in 1976, the State designated the estuary as an area of special concern and funded the Grays Harbor Regional Planning Commission to establish a collaborative intergovernmental planning process. Each unit of local government, state agency and Federal agency with legal jurisdiction over the use of the estuary was brought together with the Port and the Regional Planning Commission to form an Estuary Planning Task Force. This group and its consultants have worked for more than 4 years to develop a long-range management plan for the estuary.

Two key features of the Grays Harbor planning process were establishment of the need for consensus on the plan among all participants, and use of consultants who served as technical resource and planning experts as well as environmental mediators. Consensus was required because each of the participating agencies had some legal authority over development proposals in the planning area, and thus the capacity to impede or expedite implementation of the plan through its actions on permit applications. All disagreements over the detailed provisions of the plan were therefore to be resolved during the planning process. The consultants were selected on the basis of their abilities to carry out both technical and mediation roles. They were not identified with any of the positions held by Task Force participants, and were hired and paid by the Regional Planning Commission.

The first detailed draft plan prepared by the Task Force proposed to allow limited expansion of the Port and the communities around the estuary, while preserving the remaining tidal wetlands. It established eight management categories by which the various portions of the entire 55,000 acres of the estuary are classified -- natural, conservancy natural, conservancy managed, rural agriculture, rural low intensity, urban residential, urban mixed, and urban development -- with intensity of allowed use increasing from natural to urban development. General guidelines were established for each management category, as well as a set of standard uses which are either permitted or potentially permitted based on subsequent conditional use review. In addition, 44 smaller sub-management units were established, for which the plan describes management

objectives, permitted activities, and special conditions in terms which can also form the basis for later necessary regulatory findings. As a result of the successively greater detail in the plan, the plan's policies became quite specific, leaving little doubt as to what uses and activities will be permitted in an area or will be subject to conditional review.

Proposed changes in the draft plan in October 1980 suggest alternative means to mitigate long-term impacts of expansion of Port and local government lands in areas requiring tideland filling. Protective easements on remaining Port-owned tidelands and other protection measures are proposed, including incorporation of requirements of Section 404(b)(1) of the Clean Water Act.

Although the process is not complete and has been a difficult and time consuming experience for most of those involved, each of the major parties in the bargaining process gained a strong awareness of the interests and concerns of the others, and each expects to achieve a compromise solution to its own problems of coastal management in the estuary. For example, the officials of the Port of Grays Harbor have been promoting the planning process as a model for resolving the conflicts among ports, environmental agencies, and citizens at several national and international conferences of port authorities.

Successful implementation of the plan will depend upon the extent to which local, state, and Federal agencies will be committed to it as a guide for permit and project review decisions, and the extent to which the general public accepts the results of the planning process. At this time, most of the local governments appear to be committed to revising their Shoreline Master Programs and planning and zoning ordinances to conform to a final plan. The state will amend its coastal zone management program accordingly. Although state and Federal agencies may agree to the plan in principle, no legal mechanism has yet been identified to require future agency administrators to abide by the planning commitments made by their agencies in formulating the plan. The state could prevent Federal agency activities, permits, financial assistance, or direct development projects that are inconsistent with its amended coastal zone management program, through the Federal consistency provision of Section 307 of the Coastal Zone Management Act, but this would not provide the same kind of legal commitment that local and state agencies are expected to provide. Similar planning efforts in Yaquina Bay and the Lower Willamette Valley in Oregon, demonstrate to those involved in the Grays Harbor process that the Federal resource agencies will abide by their commitments to a consensus plan, but the lack of a binding legal commitment leaves a gap in the predictability sought by most of those involved.

The concepts of tiering regulatory decisions on permits using the findings and conclusions set forth in the final management plan document, and tiering environmental impact statements related to the plan by using a programmatic environmental impact statement (PEIS) to accompany the plan, have been accepted in principle by the Federal agency representatives in the process. However, some of the parties are not yet entirely sure how the tiering concept will work without more explicit legal authority in some agency regulations. For example, when the agencies determined that a PEIS would be needed before the agencies could make commitments to the plan, none of the agencies was sure it could initiate or assume lead responsibility for the statement in the absence of a specific project application. The Office of Coastal Zone Management ultimately accepted the lead agency role, and is now preparing a joint PEIS with the cooperation of the Army Corps of Engineers, EPA, the Fish and Wildlife Service, and the National Marine Fisheries Service. The PEIS will address the proposed action to amend the Washington Coastal Zone Management Program to include a final plan, and the proposed actions of the other participating agencies to adopt the plan through memoranda of agreement for use in the review of subsequent permit applications.

Although organized citizen participation has been part of the development of the plan from the beginning, some interest groups have faulted the extent and nature of this participation. For example, environmental groups were not allowed voting representation on the Task Force. Some groups have opposed early drafts of the plan that were distributed for public review, claiming that the boundary was inadequate, that resource information was faulty, and that the proposed drafts were inconsistent with Federal laws.

In response to these criticisms, the Task Force invited local and national representatives of environmental and citizen's organizations to present their concerns about the plan at its December 1980 meeting. As a result, a new subcommittee was established to study alternatives and mitigation proposals presented by these groups, which will be considered by The Task Force at its March 1981 meeting.

2. San Francisco Bay California

The saving of San Francisco Bay through a collaborative process involving dedicated citizen groups, an Army Corps of Engineers study describing the rate and trends of filling in the Bay, and an interagency commission formed for the long-term protection of the Bay, has been well documented. The success of this earliest coastal management program served as important evidence of the need for the Coastal Zone Management Act in 1972, and now serves as a prototype for special area management planning.

The unique natural features of San Francisco Bay provide a resource of major value to the State of California and the Nation. For example, the San Pablo Bay National Wildlife Refuge, between the Petaluma River outlet to the Bay and the City of Vallejo, is the winter home of approximately 40,000 canvasback ducks -- more than half the population of the Pacific Flyway -- as well as great numbers of loons, grebes, cormorants and terns. Seventy percent of all shore birds using the Pacific Flyway at some time during the year are dependent upon the South Bay. The Bay also has significant value for international commerce and industrial development in the west. In 1978, bay ports handled 52 million tons of cargo, and the Port of Oakland is the second largest container handling port in the country. The Ports of San Francisco and Oakland alone provide more than 20,000 jobs to Californians.

These values are obviously interdependent and often in conflict. In 1850, San Francisco Bay's surface at mean high tide included approximately 680 square miles. About a century later, this surface had been reduced to approximately 430 square miles. Between 1940 and 1965, the Bay was being filled at an average rate of 2,400 acres per year, and its marine productivity was steadily declining.

Documentation of these trends in 1959 by the Department of Commerce for the Army Corps of Engineers, and specific project proposals to fill massive additional amounts of wetlands in the Bay, triggered citizens' actions to halt the filling under the leadership of a group called Save the Bay. The citizens' campaign led to passage of state legislation in 1965 establishing the San Francisco Bay Conservation and Development Commission, which was charged with preparing the San Francisco Bay Plan (the first special area management plan in the United States) and controlling further piecemeal filling of the Bay while the plan was being completed.

After the temporary Commission had prepared a San Francisco Bay Plan, a permanent Bay Conservation Development Commission (BCDC) was established in 1969 by legislation which also adopted the plan. The 27-member Commission of citizens and state, local, and Federal officials administers the Bay Plan through permits controlling all development within 100 feet of a line 5 feet above mean high tide. The Plan consists of a series of findings with respect to the resources, problems, and needs of the Bay, detailed policies to address these findings, and a series of maps for segments of the Bay containing detailed land-use designations, policies, and standards for use of the shoreline and water area within each segment. The Bay Plan policies cover virtually all aspects of development within the BCDC jurisdiction and adjacent areas, and serve as the basis for all permits within BCDC's jurisdiction.

One of the main objectives of the Commission is to control development in the Bay area for water-related purposes. Since 1965, the total amount of fill allowed in the Bay has been 350 acres, for which BCDC has obtained, in mitigation the opening of about 350 acres of diked wetlands. At the same time, BCDC has allowed development to proceed around the Bay. For example, in 1976, BCDC allowed $42 million in development, while creating 2 miles of new public access areas on the Bay. The Port of Oakland has grown to become the second largest container port in the Nation since BCDC was established.

More detailed special area plans for segments of the San Francisco Bay Shoreline have been completed through collaborative planning processes involving all levels of government, citizen groups, and industry, which have resolved many other conflicts between private and public objectives for the Bay. Detailed plans for the northeast waterfront of San Francisco, the Port of Benicia, Suisun Marsh, and the South Richmond Shoreline have been completed, and will become a more detailed part of the Bay Plan and local government plans when fully adopted by each local government. These Bay Plan refinements guide permits issued by BCDC and by the Federal agencies represented on BCDC (EPA and the Army Corps of Engineers).

3. The Lower Willamette River, Oregon

The Willamette is one of Oregon's major rivers. Most of the state's population centers and much of its prime agricultural lands are located in the Willamette Valley. The Lower Willamette River represents a particularly valuable resource, because it contains an area of semi-delta freshwater marshlands, interspersed with uplands, sloughs, and small cliffs, while flowing through Portland, the major metropolitan area in Oregon. The lower Willamette has historically served maritime shipping with a deepdraft navigation channel to the Pacific, with gravel mining and other industrial activities, while providing a quality freshwater environment to support a major salmon run, sport fishing, and other water-related recreational activities.

Over the years, river land filling and expansion began to create development that was well intended but unplanned from a total water use aspect. In December of 1972, the Port of Portland approached state permitting agencies with preliminary plans for riverfront development involving a fill of approximately eight acres located in an existing marine cargo terminal complex. The Port encountered resistance because of the lack of an overall water use or harbor management plan that considered the cumulative impact of this and other previously approved fills which had the potential for major impact on waterway resources. The proposed 8-acre fill permit application, though for a needed port steel off-loading dock, did not consider the effects upon the river, upstream or downstream from the proposed site. Due to growing government agency resistance to projects along the lower Willamette River, Oregon's Division of State Lands permits and Federal U.S. Army Corps of Engineers' permits for waterway construction were taking 90 to 120 days to process. Because of a lack of overall agency coordination and local planning, the permit process included little, if any, consideration for the cumulative impacts of waterway projects.

The Port's formal application for necessary state and Federal permits for the project was made in the fall of 1972. Even though some resource agencies were dissatisfied with the impact of the proposal, few policies or standards had been promulgated on which to base a denial. However, the agencies were able to convince the State Lands Board to restrict further development in the area involving state owned submerged lands until a specific management plan could be completed for the lower parts of the River and its shorelines. In March 1973, the State Land Board directed the Division of State Lands, the Port of Portland, and various state and local resource agencies that had legal jurisdiction over development to serve as an interdisciplinary technical team of consultants for the formulation of the plan.

The Oregon Division of State Lands served as lead agency to facilitate the development of the plan by the committee. The Port of Portland agreed to play a major role in developing the plan by providing technical staff support and funding. The committee involved staff from the Port of Portland, the City of Portland, four state resource agencies, the Oregon Department of Transportation, the Division of State Lands, the Oregon "Greenway" Project, and the Army Corps of Engineers. In addition,

periodic public meetings were held, as well as reviews with other government agencies, property owners, and special interest and user groups. A special committee representing major interest groups was formed to review and monitor the progress and content of plan drafts.

A draft plan was completed in January 1974, and was then subjected to an extensive one-year review process. The Lower Willamette River Management Plan was a limited prototype for the Grays Harbor Plan. It established a series of guidelines for use of all waterfront property. It divided the shoreline into segments and established general use categories, guidelines for development, and activity standards for each segment. It attempted to create a balance between Port-related industrial development and other uses and long term conservation of valuable natural areas. The draft plan was adopted immediately by the State Lands Board, thus controlling development in the area until the final plan was completed.

As soon as the plan was placed in operation, the permitting process was improved. By July 1974, permit applications that had been taking 90 to 120 days to process prior to adoption of the plan were being processed in 15 days. In 1975, the State Lands Board's review committee reported in its monthly review of the Plan that:

> "We found the Plan to be a workable and effective tool for use in managing the submerged and submersible lands of the Lower Willamette River. It provides an excellent, systematic means for making policies and guidelines available to landowners, developers, and the agencies which manage the use of the Willamette River. We perceive that management decisions for this waterway area are now much more consistent than before the Plan was developed. Further, processing of applications which are in conformance with the Plan has been expedited to the advantage of both applicant and agency."

In April 1978, the Port of Portland reported to the Oregon Public Ports Association that Portland was able to obtain all permits for a major shipyard expansion project in 5 months, a process that would have normally taken several times this period under the previous system. Reporting on the Plan, one Port Officer indicated that:

> "The key to the successful permit acquisition process was the early involvement of the resource agencies in the project planning. Preliminary design coordination with representatives of the permit agencies was begun by Port staff far in advance of actual permit application dates. The guidelines set out in the plan are used by the agencies, by industry and the Port in planning and designing projects, preparing permit applications and processing of permits. In other words, an industry or Port planning a waterfront project, by referring to the plan, knows what type of construction is acceptable to the permit and resource management agencies, in which sections of the river it is acceptable in and at what time of the year. The agencies when evaluating a permit application for a project on the Lower Willamette, refer to the Plan, and if the plan guidelines are followed, they have a basis for rapid approval."

4. Other Areas

Based on the apparently successful use of special area management planning techniques discussed above, several other areas have initiated similar processes and are actively exploring these techniques.

In response to Oregon's statewide goals and guidelines for land use and coastal planning, which each county and municipality must use in mandatory revisions of its local comprehensive plans, the Coos-Curry Council of Governments has formed an interagency task force and several functional and citizens advisory groups for the preparation of an Estuary Management Plan for the Coos Bay Estuary. Numerous interagency permit problems preceded the formation of this task force, including a major controversy over a proposal to expand the North Bend Airport in an area that would require filling of wetlands. The planning process is patterned after the Grays Harbor process, with expanded and more direct involvement of citizens and interest groups and a more deliberate process of incorporating state and Federal legal requirements. Planning for the Estuary has been underway since November 1979, and an initial discussion draft is scheduled to be completed by March 1981.

Kawainui Marsh, the largest freshwater marsh in the State of Hawaii, provides an important habitat for four endangered waterbird species and a variety of migratory waterfowl, and serves as a flood control basin and sediment trap protecting Kailau Bay's inshore waters, beaches, and reefs. Conflicts among various resource objectives have often existed as a result of its proximity to densely urbanized communities and present urban district zoning for portions of the marsh. Several state, local, and Federal agencies have legal jurisdiction and functional responsibilities related to the marsh area. The Hawaii Coastal Zone Management Program has formed a Technical and Policy Advisory Committee to bring together state, local, and Federal agencies as well as affected landowners and public interest groups. This Committee will study the resources of the marsh and formulate a management plan, guided by the state's coastal zone management objectives and policies. The scope of work for a scientific baseline study has been formulated, and the state is seeking guidance and financial support for continued special area management planning.

Over the last several years, the Apalachicola River and Bay system has been the subject of several interrelated planning efforts involving the Federal government, numerous agencies in three states, local governments, and citizens. The Apalachicola River and its tributaries drain 19,600 square miles in Alabama, Florida, and Georgia; the large volume of water carried by the River (averaging 14 billion gallons a day) maintains a delicate balance of nutrient-rich brackish waters in Apalachicola Bay, Florida, one of the most productive bays in the gulf region. The basin has been subject to controversial, large-scale development proposals that would substantially alter its predominately rural characteristics and significantly affect its natural resource values. Few of the local governments in the Florida portion of the basin have the resources or capabilities to deal with the forces for change on their own. The state has formed a committee that includes an elected official and representatives of economic and conservation interests from each of the area's 6

counties, as well as 12 state agency representatives and others, which is working closely with Federal agencies to perform specific coordination and planning functions. It has developed state objectives for the basin, begun an overall management plan for the bay and river aided by state planners, and facilitated the designation of an Apalachicola River and Bay National Estuarine Sanctuary covering a 193,000-acre area to be administered by the State with the advice of a broad-based management committee.

Similar planning processes are also being considered or conducted in a number of other areas, including: Cleveland-Cuyahoga County, Ohio; Sitka, Kenai, and other communities in Alaska; Lake Pontchartrain, Louisiana; Winya Bay, South Carolina; Yaquina Bay, Oregon; the Lower Columbia River between Washington and Oregon; Gulfport, Mississippi; and the port master planning process in San Diego.

C. Major Constraints to Improved Coordination

The special area planning experiences discussed above have also focused attention on a number of problems agencies are encountering in using a joint planning approach to improving coordination of regulatory decisions. The major problems are summarized below:

1. Agencies May Lack Resources to Participate Fully

Permit coordination and joint planning requires funds for data collection, research, planning and participation. Joint planning with other Federal, state, and local agencies and interest groups also requires extensive amounts of time by agency representatives. Adequate representation of agency interests in such processes often requires an extensive understanding of the planning issues, and technical skills in planning, negotiation and conflict resolution. Most regional offices of Federal permitting or environmental review agencies have limited budgets and staff assigned to planning issues or to review project applications, and may lack staff with all the necessary qualifications to participate effectively.

For example, during the period in which regional Federal officials are being asked to review revisions to County Comprehensive Plans in all coastal counties in Oregon, they are also expected to spend at least 3 days per month in meetings and many more hours reviewing technical and planning documents for preparation of the Coos Bay Estuary Management Plan. Most of these agencies have only one technical staff person assigned to coastal planning activities in several states and usually these persons have many other duties, such as reviewing permit applications for coastal development. The Environmental Protection Agency representative has had to inform the Coos Bay Task Force on several occasions that budget limits for travel between Seattle and Coos Bay would prevent his participation in important Task Force planning meetings.

Lack of resources for such planning has been especially critical in California, where more than 60 local coastal programs are being developed concurrently, under state guidelines requiring consultation with Federal agencies.

2. Insufficient Resource Information May Be Available

Lack of sufficient resource information to formulate specific plans to guide development is a problem that is linked directly with the problem of inadequate resources. Agencies may not have adequate resources to acquire data that will be sufficiently detailed to document anticipated impacts, expedite the permit process or make long term conservation and development trade-offs. If jointly prepared, plans are to be used as a basis for meeting documentation requirements and for resolving conflicts in advance of permit applications. This information must be sufficiently detailed to meet these needs. For example, the Columbia River Estuary Task Force (CREST) has been preparing a general plan for the Lower Columbia River between Oregon and Washington for the past several years. However, the lack of data on critical feeding areas for benthic invertebrates and migrant anadromous fish species in the Lower Columbia prevents the plan from being useful for assessing impacts of major permits in this area of concern. This problem became apparent when agencies attempted to use all available data, including the CREST planning and environmental work, for comments on a proposed Brown and Root facility for oil platform construction near Astoria. Because of this general paucity of data, the Columbia River Estuary Data Development Program (CREDDP) has received a research grant of $6.6 million through the U.S. Water Resources Council to obtain additional information.

Applicants for permits typically provide much of the environmental resource data used to evaluate their projects, either in the form of permit application fees which are used for data collection, or by supplying data requested by the agency. In areas that have been studied intensively in anticipation of large development proposals (or because of other research activity), sufficient information may be available for planning in advance of project applications. In areas where prospective applicants for large development proposals are dependent upon resolution of regulatory conflicts, such as port expansion areas, they may be willing to supply or pay for the required information. In other cases, agencies participating in such planning will have to collect the required data, or acquire it through planning and research funds made available for these efforts. For example, prior to 1976, the Army Corps of Engineers had conducted extensive analyses in Grays Harbor on dredge materials and alternative disposal sites in support of their operation and maintenance program for the Harbor. However, the Office of Coastal Zone Management supplied more than $60,000 in FY 1976 to support the first year of planning for the Grays Harbor Estuary, much of which was needed to fill gaps in, or interpret available resource information.

Some parties to a joint planning process may insist that agreement be reached on the adequacy of resource data before they are willing to reach agreement on specific issues, particularly if the plans are expected to

satisfy regulatory requirements. One reviewer of this report, a consultant who has had great influence over the development of the special area management concept, cautioned that "Getting agreement on the adequacy and significance of data may be as difficult as reaching agreement on the issues themselves." He also indicated that agreement on data is not always a prerequisite to compromise on the contents of the plan:

> "We must realize that in special area management planning, decisions will often be a form of compromise. Accepting a resource loss ... may be acceptable within a special area management process simply because of the guarantees for resource protection gained elsewhere. Data will shape decisions differently for each participant in this type of planning process. Accepting that data is nonetheless required in the process, it should then be specifically directed toward the type of decisions that need to be made. Just as we talk about a tiering of decisions, the data to support these decisions must be tiered."

3. Agencies Are Used to Single-Purpose Planning and Regulation

The existing tradition of single purpose functional planning and regulation by Federal, state, and local agencies may be one of the most significant obstacles to improving coordination in the regulatory system.

If conflicts in the regulatory system are to be resolved through advance planning, all participants must recognize the legitimacy of the competitive concerns of other agencies or interest groups. In a process that depends upon consensus among the competing parties to a dispute, each participating agency must be willing to compromise its single interests to the common plan, and must seek to accommodate the goals of others as much as legally possible without sacrificing the integrity of its own goals or requirements. For example, during the Grays Harbor Estuary planning process one representative of the Fish and Wildlife Service, an ardent environmentalist, found himself defending the port's compromise proposal for filling a part of the harbor for port expansion, while local and port officials were found supporting state and Federal demands for protection of the harbor to maintain fish migration routes and habitat.

Most Federal agency personnel, however, are experienced primarily in seeking implementation of narrower-purpose programs through the case-by-case review of permits. One reviewer of this report stated the problem as follows:

> "[T]he specific standards or criteria for development may vary from agency to agency depending on their basic sense or purpose. For example, a fishery agency would develop standards directed toward the fishery, a game agency may develop criteria primarily directed toward fauna, a city may base its standards on a priority need to remove urban blight, and a port may develop its program on a need to create jobs."

Such a narrow perspective is often a legitimate response to statutory responsibilities. For example, under the Fish and Wildlife Coordination Act, the National Marine Fisheries Service, the Fish and Wildlife Service, and state wildlife agencies are to be consulted by other Federal "action" agencies that propose to undertake or approve activities in water bodies. Such consultation, however, is with respect to fish and wildlife concerns; the action agencies are also expected to consult others for expressions of competing interests. No explicit incentive or responsibility is provided to the fish and wildlife agencies to review projects comprehensively or to balance other concerns in the overall public interest, and some concern exists that any attempt to do so will simply dilute the impact of those agencies' recommendations. The responsibility for "balancing" the competing interests of several agencies has thus typically fallen on the Army Corps of Engineers, when shoreline or wetland alteration is involved, or more recently on state coastal zone management agencies that have such responsibility.

Thus, to the extent that agency representatives view comprehensive planning for a special area as deemphasizing or diluting the purposes of their programs in the process of balancing other interests, they may resist direct involvement in such planning. Some officials may consider direct involvement in consensus planning or bargaining processes such as described above as an abdication of their own official responsibility to balance conflicting points of view and to decide what is in the best interests of the public and the Nation. Others may resist such planning because past attempts at open planning for public works projects have failed to produce consensus among opposing parties, or failed to produce a consensus that supported their preferred alternative. Unless care is taken to create an appropriate balance of interests, some environmental agencies may sense that the membership of a proposed collaborative planning group is too dominated by development or local government groups to ensure a reasonable balance in the plan.

In some cases agencies may resist direct participation in special area management planning because of the concept that land use planning should be the sole responsibility of state and local government. Where they have direct legal jurisdiction over permits, they fail to recognize that they are indirectly involved in land use and water planning as a result of their influence over project decisions. Even where portions of special area planning efforts extend beyond the geographic areas where Federal agencies have direct legal jurisdiction, such as upland areas beyond navigable waters, the uses of these lands affect nationally significant resources of concern to the agencies.

Direct involvement of interest group representatives, such as environmental and development organizations, property owners and other citizen groups, will also be necessary to assimilate their concerns into a specific plan. These representatives may resist special area management planning for many of the same reasons that agency representatives do, until such processes can demonstrate that, on balance, these groups can realize more of their objectives through advanced planning and consensus with others, than through single purpose challenges to proposals on a

case-by-case basis in the permitting process. However, consensus may be difficult to achieve from groups polarized on what are viewed as ideological issues. On the other hand, the failure to include these groups precludes effective plan implementation. In Coos Bay, Oregon, this issue is addressed by allowing at-large citizen membership on the planning team, allowing interest groups on technical advisory committees, and routine opportunities for citizen comment on plan proposals during the planning process.

4. Legal or Administrative Constraints May Prevent the Full Use of Plans for Determining Partial Compliance with Federal Regulations

If special area plans are to be effective in increasing the consistency and predictability of the Federal regulatory process, the plans must be used by regulatory agencies and given great weight in agency decisions. Local and state agencies and interest groups must be assured that the products of collaborative planning partnerships with Federal agencies will endure beyond the terms of office of the individual representatives of these agencies who participated in the process. If the local and state agency representatives to collaborative planning processes for special areas are expected to implement fully the products of these partnerships through state and local laws, they in turn will expect the Federal representatives to implement fully the plans through binding agreements that are enforceable under Federal law. For example, a port authority may be reluctant to legally dedicate certain lands for long-term natural preservation as part of a plan if participating Federal agencies are unable or unwilling to provide some long-term commitments to port-related development needs in the plan.

However, under existing law, regulation, and administrative policy, some agencies may not be sure they have the legal authority to provide binding commitments to plans, even if they have participated fully in the development of such plans and the results meet all of their expectations or concerns. For example, because of the "public interest review" requirement established in the regulatory program of the Army Corps of Engineers described in Section V, some Corps representatives suggest that it must remain neutral regarding any plans as an expression of agency policy governing permits. Corps regulations indicate that "officially adopted plans ... shall be presumed to reflect *local* factors of the public interest and shall be considered in addition with the other national factors of the public interest." (Emphasis added.) However, other Corps representatives have indicated that so long as a plan is reviewed and adopted following the same "public interest review" procedures as a permit application follows, the Corps could endorse such plans and use them in its subsequent review of permits. These legal constraints are not found in the substance of existing laws, which need to be preserved; rather, the procedures for implementing substantive standards may inhibit the use of plans in the case-by-case review of projects.

A related problem for all Federal agencies is the uncertainty over the type of instrument needed to provide legally binding commitments or formal expressions of agency support for special area management plans. For example, although case law is very limited in this area, memoranda of understanding are typically used only for establishing procedural agreements or understandings among agencies, and substantive agreements may not be enforceable unless authorized by statute or regulations of the participating agencies following required administrative procedures.